

EXHIBIT 1

In the Matter Of:

FAIR FIGHT ACTION vs BRAD RAFFENSPERGER

1:18-cv-05391-SCJ

SEAN P. TRENDE

April 16, 2020



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FAIR FIGHT ACTION vs BRAD RAFFENSPERGER

April 16, 2020

1

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF GEORGIA
3 ATLANTA DIVISION

4 FAIR FIGHT ACTION, INC.;)
5 CARE IN ACTION, INC.;)
6 EBENEZER BAPTIST CHURCH OF)
7 ATLANTA, GEORGIA, INC.;)
8 BACONTON MISSIONARY BAPTIST)
9 CHURCH, INC.;)
10 VIRGINIA-HIGHLAND CHURCH,)
11 INC.; and THE SIXTH)
12 EPISCOPAL DISTRICT, INC.,)
13)
14 Plaintiffs,)
15)
16 v.) CIVIL ACTION FILE
17) NO. 1:18-cv-05391-SCJ
18 BRAD RAFFENSPERGER, in his)
19 Official capacity as Secretary)
20 of State of the State of)
21 Georgia and as Chair of the)
22 State Election Board of Georgia;))
23 REBECCA N. SULLIVAN,)
24 DAVID J. WORLEY, and SETH HARP,)
25 in their official capacities)
as members of the STATE ELECTION)
BOARD; and STATE ELECTION BOARD,))
Defendants.)

16 REMOTE DEPOSITION OF
17 SEAN P. TRENDE

18 10:09 a.m.
19 April 16, 2020

20 1146 Elderberry Loop
21 Delaware, Ohio

22 Penny McPherson Walker, CCR-B-914, RPR

23
24
25

SEAN P. TRENDE
FAIR FIGHT ACTION vs BRAD RAFFENSPERGER

April 16, 2020

2

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SEAN P. TRENDE
FAIR FIGHT ACTION vs BRAD RAFFENSPERGER

April 16, 2020
3

1 INDEX TO EXAMINATIONS

| | | |
|---|---------------------------|------|
| 2 | Examination | Page |
| 3 | Examination by Mr. DuBose | 4 |
| 4 | - - - | |

5 INDEX TO EXHIBITS

| | | | |
|----|-------------|---|------|
| 6 | Plaintiffs' | | |
| 7 | Exhibit | Description | Page |
| 8 | Exhibit 1 | Plaintiffs' Notice of Videotaped Deposition of Sean Trende and Notice to Produce | 6 |
| 10 | Exhibit 2 | Expert Report of Sean P. Trende | 48 |
| 11 | Exhibit 3 | Response of Plaintiffs' Expert Stephen C. Graves to Expert Report of Defendants' Expert Sean P. Trende | 54 |

14 (Plaintiffs' Exhibits 1, 2 and 3 have been
15 attached to the original transcript.)

SEAN P. TRENDE
FAIR FIGHT ACTION vs BRAD RAFFENSPERGER

April 16, 2020

5

| | | |
|----|---|----------|
| 1 | A. Yes. | 10:09:56 |
| 2 | Q. I'll try to be clear and fair in asking my | 10:09:56 |
| 3 | questions. If you don't understand or if you don't | 10:10:00 |
| 4 | hear me, please ask me to repeat; I don't mind. If | 10:10:02 |
| 5 | you answer a question, I will assume you understood | 10:10:06 |
| 6 | the question. Is that fair? | 10:10:08 |
| 7 | A. Yes. | 10:10:10 |
| 8 | Q. Are you on any medications that would | 10:10:11 |
| 9 | impair your ability to testify accurately here today? | 10:10:13 |
| 10 | A. No. | 10:10:17 |
| 11 | Q. We can take a break whenever you like. | 10:10:17 |
| 12 | The only thing I ask is if I have a question on the | 10:10:22 |
| 13 | table that you answer that question before taking the | 10:10:25 |
| 14 | break. Is that fair? | 10:10:28 |
| 15 | A. Yes. | 10:10:28 |
| 16 | Q. Mr. Trende, are you represented by counsel | 10:10:29 |
| 17 | here today? | 10:10:31 |
| 18 | A. You know, the rule on expert attorney | 10:10:32 |
| 19 | privilege came in after I left the practice of law. | 10:10:40 |
| 20 | So I don't think I have an attorney-client | 10:10:44 |
| 21 | relationship with someone, but I would imagine the | 10:10:47 |
| 22 | State of Georgia under this new privilege has some | 10:10:50 |
| 23 | relationship with me. | 10:10:53 |
| 24 | Q. So I take that as a no. | 10:10:54 |
| 25 | A. You should take that as I don't really | 10:10:58 |

SEAN P. TRENDE
FAIR FIGHT ACTION vs BRAD RAFFENSPERGER

April 16, 2020

6

1 know how this new expert attorney privilege thing
 2 works. I'm not in an attorney-client relationship
 3 with anyone, to my knowledge.

4 Q. We can sort that out.

5 MR. DUBOSE: Bryan, we're reserving all
 6 objections except for privilege and form?

7 MR. TYSON: Yes, that's acceptable.

8 Thanks.

9 MR. DUBOSE: I just want to attach the
 10 Notice of Deposition as the first exhibit.

11 Penny, do you have that?

12 (Discussion ensued off the record.)

13 (Plaintiffs' Exhibit 1 was marked for
 14 identification.)

15 MR. DUBOSE: Let's attach that as
 16 Exhibit 1.

17 Q. (By Mr. DuBose) Mr. Trende, Exhibit 1 to
 18 your deposition will be the Notice of Deposition.
 19 I'm not going to ask you any questions about that;
 20 just for the sake of a complete record, we're
 21 attaching that as an exhibit to your deposition.

22 So, Mr. Trende, you were asked to bring --
 23 are you -- one more question.

24 Actually, never mind. Mr. Trende, we
 25 received from Mr. Tyson yesterday a couple of

SEAN P. TRENDE
FAIR FIGHT ACTION vs BRAD RAFFENSPERGER

April 16, 2020

7

1 documents. One was an invoice that you forwarded to
2 the State for your work and I think one more thing.
3 I don't recall it.

10:12:35

10:12:37

10:12:57

4 MR. DUBOSE: Bryan, what was the other
5 thing you sent yesterday, the invoice and what
6 else?

10:12:57

10:12:58

10:13:02

7 MR. TYSON: I believe it was a cover
8 e-mail where Mr. Trende sent the invoice and
9 then the invoice itself. So those were the two
10 documents related to request number 1 in the
11 notice on his billing.

10:13:03

10:13:05

10:13:07

10:13:12

10:13:16

12 Q. (By Mr. DuBose) So we have the invoice
13 and a cover e-mail. Mr. Trende, do you have any
14 additional documents that may be responsive to our
15 requests as you sit here this morning?

10:13:16

10:13:17

10:13:20

10:13:24

10:13:26

10:13:27

10:13:34

10:13:37

10:13:38

10:13:40

10:13:44

10:13:49

10:13:54

10:13:56

SEAN P. TRENDE
FAIR FIGHT ACTION vs BRAD RAFFENSPERGER

April 16, 2020

8

| | | |
|----|---|----------|
| 1 | A. No. | 10:13:58 |
| 2 | Q. Who contacted you? | 10:13:58 |
| 3 | A. I believe Mr. Tyson. | 10:14:01 |
| 4 | Q. Was that e-mail or phone? | 10:14:05 |
| 5 | A. I don't know. | 10:14:11 |
| 6 | Q. You can't recall? | 10:14:12 |
| 7 | A. Can't recall. | 10:14:14 |
| 8 | Q. Did you know Mr. Tyson before you were | 10:14:15 |
| 9 | contacted by him about serving as an expert in this | 10:14:22 |
| 10 | case? | 10:14:26 |
| 11 | A. Not that I can remember. | 10:14:26 |
| 12 | Q. Do you have any notes or anything to that | 10:14:28 |
| 13 | effect regarding the initial communications with | 10:14:41 |
| 14 | Mr. Tyson when you were contacted about serving as an | 10:14:44 |
| 15 | expert in this case? | 10:14:49 |
| 16 | A. Certainly not. | 10:14:50 |
| 17 | Q. So when you are contacted about an | 10:14:52 |
| 18 | engagement, what is your typical practice? Do you | 10:15:01 |
| 19 | not take notes at all, or do you just kind of keep it | 10:15:05 |
| 20 | all in your head? | 10:15:09 |
| 21 | A. I usually try to keep it all in my head. | 10:15:10 |
| 22 | As a former attorney, I try not to create those sorts | 10:15:14 |
| 23 | of documents. | 10:15:17 |
| 24 | Q. So it's intentional that you don't create | 10:15:18 |
| 25 | documents when you're contacted? | 10:15:21 |

SEAN P. TRENDE
FAIR FIGHT ACTION vs BRAD RAFFENSPERGER

April 16, 2020

9

1 A. It seems to work not creating them, and 10:15:23
2 there's no downside to not creating them. So... 10:15:26

3 Q. What's the upside to not creating them? 10:15:29

4 A. You don't create a paper record as an 10:15:31
5 attorney, just as I imagine -- just as I imagine you 10:15:34
6 would hope your experts don't do that. 10:15:36

7 Q. But you're not serving as an attorney in 10:15:39
8 this case, are you? 10:15:41

9 A. No, but I know how being an expert works, 10:15:42
10 and I know how things work on the attorney side of 10:15:46
11 things. 10:15:49

12 Q. So you don't create them because you know 10:15:49
13 you may get a request that you produce those 10:15:51
14 documents at some point in time, right? 10:15:54

15 A. That's certainly it. 10:15:56

16 Q. And throughout your service as an expert 10:15:57
17 in this case, have you followed that practice of 10:16:01
18 creating as little paper as possible? 10:16:05

19 A. Yes. 10:16:09

20 Q. Outside of the invoice that you sent over, 10:16:14
21 do you have any documents that relate to the 10:16:20
22 compensation for the work that you've done in this 10:16:24
23 case? 10:16:25

24 A. No. 10:16:26

25 Q. I notice that the invoice did not have 10:16:28

SEAN P. TRENDE
FAIR FIGHT ACTION vs BRAD RAFFENSPERGER

April 16, 2020

10

1 detail. Do you have any notes that record the detail
2 of the work you've performed on behalf of the State
3 in this case?

4 A. No.

5 Q. So how do you keep record of the time you
6 spent on the case? Is that handwritten, or is that
7 in your head too?

8 A. Mostly in my head.

9 Q. So do you record at the end of, what,
10 every week or month or day the amount of time you
11 spent on a case?

12 A. A lot of it I can just remember from the
13 time that I spent, what days I spent on it. I know
14 what my normal workday is, and I can create it that
15 way. I have no written documents.

16 Q. So you were first contacted in the fall
17 of 2019 about serving as an expert in this case,
18 right?

19 A. I believe so.

20 Q. And the invoice that you generated I
21 believe is dated for what month of this year?

22 A. I don't have it in front of me.

23 Q. Well, but between the time that you were
24 retained and the time you generated that invoice,
25 your testimony is that there is not one single piece

10:16:31

10:16:35

10:16:39

10:16:39

10:16:40

10:16:44

10:16:49

10:16:50

10:16:52

10:16:56

10:17:00

10:17:01

10:17:04

10:17:06

10:17:11

10:17:13

10:17:16

10:17:19

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10:17:19

10:17:23

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10:17:31

10:17:34

10:17:39

SEAN P. TRENDE
FAIR FIGHT ACTION vs BRAD RAFFENSPERGER

April 16, 2020

11

1 of paper that details the amount of time you spent
 2 working on this case and the particular services
 3 provided for each entry of work; there's not one
 4 single piece of paper?

5 A. Yes.

6 Q. That's correct? I'm correct in what I'm
 7 saying?

8 A. Yes.

9 Q. That's a pretty good memory. Did anyone
 10 execute an engagement letter for the services that
 11 you provided in this case?

12 A. I don't believe so.

13 Q. Have you been retained personally, or was
 14 RealPolitics -- or RealClearPolitics retained?

15 A. RealClearPolitics is not involved.

16 Q. So do you have a company that you work
 17 through that is your own when you provide expert
 18 witness services?

19 A. No.

20 Q. So you work through your personal,
 21 individual profile; is that correct?

22 A. Yes.

23 Q. So you don't have a corporate entity
 24 through which you work to provide expert services?

25 A. I don't have any corporate entity, period.

10:17:42

10:17:46

10:17:49

10:17:57

10:17:58

10:18:00

10:18:02

10:18:03

10:18:04

10:18:17

10:18:20

10:18:24

10:18:25

10:18:31

10:18:33

10:18:37

10:18:42

10:18:45

10:18:46

10:18:48

10:18:55

10:19:02

10:19:07

10:19:12

10:19:15

SEAN P. TRENDE
FAIR FIGHT ACTION vs BRAD RAFFENSPERGER

April 16, 2020

12

1 Q. So is there an engagement letter between
 2 the defendants and you individually? 10:19:19

3 A. Not to my recollection. If there was, 10:19:24
 4 Mr. or -- Mr. Tyson would have it. 10:19:27

5 Q. So the services you are providing are 10:19:31
 6 pretty much pursuant to an oral agreement? 10:19:35

7 A. I think that's right. 10:19:40

8 MR. TYSON: Von, before we get too much 10:19:47
 9 farther, I believe we do have an engagement 10:19:51
 10 letter that outlines a lot more than just 10:19:52
 11 compensation. So I can provide a redacted 10:19:55
 12 version of that if you think that's responsive. 10:20:00

13 MR. DUBOSE: Sure. You need time to 10:20:01
 14 redact it; is that what you're saying? 10:20:02

15 MR. TYSON: Yes, so I can take a look. 10:20:04

16 MR. DUBOSE: If you could do that while 10:20:09
 17 we're together here today and send it over and 10:20:11
 18 if I have anything additional on it, I'll circle 10:20:13
 19 around to it so we'll keep moving. 10:20:20

20 MR. TYSON: Sounds good. I'll look into 10:20:23
 21 that. 10:20:26

22 MR. DUBOSE: All right. Thanks. 10:20:26

23 Q. (By Mr. DuBose) So, Mr. Trende, did you 10:20:26
 24 just forget that there was an engagement letter in 10:20:28
 25 this case? 10:20:30

SEAN P. TRENDE
FAIR FIGHT ACTION vs BRAD RAFFENSPERGER

April 16, 2020

13

1 A. I do a lot of expert work. Sometimes
 2 there's engagement letters; sometimes there aren't.
 3 I don't remember there being one here.

4 Q. What is your hourly rate for the services
 5 you provided in this case?

6 A. I believe it's 300 an hour. That's my
 7 standard rate.

8 Q. When did you begin work on this case?

9 A. I don't know.

10 Q. Was it shortly after you got the call from
 11 Mr. Tyson?

12 A. I seem to remember you-all were stalled
 13 out, and there was some sort of discovery battle or
 14 something. I don't think I started right away.

15 Q. Have you been paid yet?

16 A. Yes.

17 Q. Paid in full?

18 A. Yes.

19 Q. Do you have any documents, including
 20 communications with counsel for defendants, that
 21 identify facts or data that the defense counsel
 22 provided and that you considered in forming the
 23 opinions you are expressing in this case?

24 A. I believe Dr. Graves included his data
 25 helpfully in his report, so I didn't need to obtain

SEAN P. TRENDE
FAIR FIGHT ACTION vs BRAD RAFFENSPERGER

April 16, 2020

14

1 anything other than the reports in this case. 10:21:56

2 Q. So notwithstanding what you needed to 10:21:59
3 obtain, my question was: Were you provided with any 10:22:09
4 documents by defense counsel? 10:22:12

5 A. No. That's my answer; I don't think 10:22:15
6 there's anything to obtain other than what Dr. Graves 10:22:18
7 reported. So other than the expert reports that were 10:22:22
8 provided to me by counsel, I don't think there was 10:22:25
9 anything else. 10:22:27

10 Q. Do you have any documents, including 10:22:28
11 communications with counsel for defendants, that 10:22:35
12 identify assumptions that the defendants' attorney 10:22:38
13 provided that the expert relied on in forming 10:22:42
14 opinions? So do you have anything as to identifying 10:22:45
15 the assumptions that defense counsel made with 10:22:48
16 respect to the subject matter of your expert report? 10:22:52

17 A. I don't believe so. 10:22:55

18 Q. What did you do to prepare for this 10:22:57
19 deposition? 10:23:00

20 A. I had a conversation with counsel and 10:23:00
21 looked over the exhibits that were provided by 10:23:02
22 plaintiffs' counsel. 10:23:06

23 Q. You say counsel; you mean Mr. Tyson? 10:23:08

24 A. Yes. 10:23:10

25 Q. And have you reviewed Dr. Graves' 10:23:11

SEAN P. TRENDE
FAIR FIGHT ACTION vs BRAD RAFFENSPERGER

April 16, 2020

15

| | | |
|----|---|----------|
| 1 | deposition? | 10:23:20 |
| 2 | A. No. | 10:23:20 |
| 3 | Q. So I want to talk to you a little bit | 10:23:21 |
| 4 | about your qualifications now. You've offered | 10:23:29 |
| 5 | opinions in (inaudible), right? | 10:23:29 |
| 6 | A. Correct. | 10:23:29 |
| 7 | THE REPORTER: I'm sorry. Mr. DuBose, I'm | 10:23:29 |
| 8 | sorry, I did not hear all that question. | 10:23:29 |
| 9 | Q. (By Mr. DuBose) Okay. Mr. Trende, you've | 10:23:42 |
| 10 | offered opinions in other voting cases, correct? | 10:23:43 |
| 11 | A. That's correct. | 10:23:46 |
| 12 | MR. DUBOSE: Am I fading out when I move | 10:23:48 |
| 13 | away from my device, Penny? | 10:23:48 |
| 14 | THE REPORTER: A little bit, yes. | 10:23:48 |
| 15 | MR. DUBOSE: I'll make sure I stay close. | 10:23:48 |
| 16 | THE REPORTER: Thank you. | 10:23:57 |
| 17 | Q. (By Mr. DuBose) One of those cases was | 10:23:57 |
| 18 | Common Cause versus Rucho -- | 10:23:59 |
| 19 | A. Rucho. | 10:23:59 |
| 20 | Q. -- Rucho in the Middle District of North | 10:24:02 |
| 21 | Carolina, right? | 10:24:07 |
| 22 | A. Correct. | 10:24:08 |
| 23 | Q. And your report in that case was dated | 10:24:09 |
| 24 | approximately April of 2017, so maybe about three | 10:24:13 |
| 25 | years ago? | 10:24:17 |

SEAN P. TRENDE
FAIR FIGHT ACTION vs BRAD RAFFENSPERGER

April 16, 2020

16

1 A. I don't have it in front of me, but I'll
2 accept your stipulation.

3 Q. And at the time you generated that expert
4 report, you had an undergrad degree, a law degree,
5 and a master's in political science; is that right?

6 A. That's right.

7 Q. And, at the time, you were a doctoral
8 student at The Ohio State University; is that right?

9 A. Thank you for getting the title right.

10 Yes.

11 Q. Well, I went to law school in Cleveland,
12 so even though I'm a Michigan fan, I've heard The
13 Ohio State University enough times to at least give
14 the institution it's proper name.

15 A. We appreciate that.

16 Q. All right. And since the 2017 expert
17 report, is it correct you've completed a second
18 master's degree?

19 A. That's correct.

20 Q. In applied statistics?

21 A. Correct.

22 Q. In your second master's degree did you
23 conduct any original research?

24 A. No.

25 Q. Let's turn to your doctoral work. The CV

SEAN P. TRENDE
FAIR FIGHT ACTION vs BRAD RAFFENSPERGER

April 16, 2020

17

| | | |
|----|--|----------|
| 1 | you provided us in this case said you expect your | 10:25:47 |
| 2 | Ph.D. this year. | 10:25:51 |
| 3 | A. Yeah, it should be updated to next year. | 10:25:52 |
| 4 | Q. Next year? | 10:25:55 |
| 5 | A. Yes. | 10:25:56 |
| 6 | Q. Have you finished all of your course work? | 10:25:58 |
| 7 | A. Yes. | 10:26:02 |
| 8 | Q. Have you defended your thesis yet? | 10:26:05 |
| 9 | A. No. That is usually done shortly before | 10:26:10 |
| 10 | you graduate. | 10:26:14 |
| 11 | Q. So what would -- | 10:26:15 |
| 12 | A. By thesis -- | 10:26:15 |
| 13 | Q. Go ahead. I'm sorry. | 10:26:19 |
| 14 | A. By thesis I assume you mean the | 10:26:20 |
| 15 | dissertation. | 10:26:23 |
| 16 | Q. Sure. That's what I mean. So you said | 10:26:24 |
| 17 | that the expected date of completion should be | 10:26:33 |
| 18 | updated to next year. Is there a reason for the | 10:26:36 |
| 19 | delay? | 10:26:38 |
| 20 | A. One of my committee members committed | 10:26:39 |
| 21 | suicide late last year, so I've had to reconfigure | 10:26:44 |
| 22 | some things. | 10:26:48 |
| 23 | Q. Okay. I'm sorry to hear that. | 10:26:49 |
| 24 | A. Yes. | 10:26:53 |
| 25 | Q. Do you have some teaching responsibilities | 10:26:53 |

SEAN P. TRENDE
FAIR FIGHT ACTION vs BRAD RAFFENSPERGER

April 16, 2020

18

| | | |
|----|--|----------|
| 1 | in connection with your Ph.D. program? | 10:27:07 |
| 2 | A. Yes. | 10:27:10 |
| 3 | Q. Are you currently still in the semester | 10:27:10 |
| 4 | for school? | 10:27:14 |
| 5 | A. Yeah. I mean, we're teaching remotely, | 10:27:17 |
| 6 | but we're still on the semester. | 10:27:22 |
| 7 | Q. And what are you teaching right now? | 10:27:26 |
| 8 | A. Voting and -- I can't remember the exact | 10:27:30 |
| 9 | title, but it's voting participation and turnout. | 10:27:35 |
| 10 | Q. Anything else? | 10:27:38 |
| 11 | A. No. | 10:27:41 |
| 12 | Q. And this is at Ohio State? | 10:27:42 |
| 13 | A. Yes. | 10:27:53 |
| 14 | Q. I'm assuming you have a syllabus for that | 10:27:54 |
| 15 | class. | 10:28:03 |
| 16 | A. Yes. | 10:28:04 |
| 17 | Q. Is it available online? | 10:28:04 |
| 18 | A. I don't believe so. | 10:28:05 |
| 19 | Q. What classes have you taught in the past? | 10:28:15 |
| 20 | A. I taught Intro to American Politics for | 10:28:22 |
| 21 | three semesters at Ohio State, and then my sophomore | 10:28:27 |
| 22 | year -- or sophomore year -- second year, spring | 10:28:33 |
| 23 | semester, sorry about that, I was asked by Ohio | 10:28:37 |
| 24 | Wesleyan University to teach Media in American | 10:28:41 |
| 25 | Government. | 10:28:46 |

SEAN P. TRENDE
FAIR FIGHT ACTION vs BRAD RAFFENSPERGER

April 16, 2020

19

| | | | |
|----|----|---|----------|
| 1 | Q. | Anything else? | 10:28:47 |
| 2 | A. | No. | 10:28:50 |
| 3 | Q. | Any syllabus available for those other two | 10:28:50 |
| 4 | | classes online anywhere? | 10:29:00 |
| 5 | A. | I don't know if they have been put up | 10:29:03 |
| 6 | | online or not. Usually the department does that. | 10:29:08 |
| 7 | Q. | What's the topic of your dissertation? | 10:29:11 |
| 8 | A. | It's a three-papers dissertation. | 10:29:14 |
| 9 | Q. | Okay. | 10:29:17 |
| 10 | A. | One of them is Supreme Court voting | 10:29:18 |
| 11 | | patterns in the early 1900s; one of them is ballot | 10:29:21 |
| 12 | | order effect, and one of them is spatio-temporal | 10:29:25 |
| 13 | | modeling of the Southern realignment. | 10:29:31 |
| 14 | Q. | Any of the three finished yet, the | 10:29:36 |
| 15 | | dissertation papers? | 10:29:42 |
| 16 | A. | No. | 10:29:43 |
| 17 | Q. | At any time in your career have you | 10:29:43 |
| 18 | | designed and executed a study yourself from start to | 10:29:49 |
| 19 | | finish? | 10:29:52 |
| 20 | A. | I think I know what you mean by study, but | 10:29:57 |
| 21 | | as broadly as you worded it, I would have to say yes, | 10:30:04 |
| 22 | | with some of my RealClearPolitics stuff. I'm | 10:30:09 |
| 23 | | assuming you mean an academic study. | 10:30:12 |
| 24 | Q. | Yes, and let's do it this way. You can | 10:30:14 |
| 25 | | certainly say anything or reference anything you've | 10:30:17 |

SEAN P. TRENDE
FAIR FIGHT ACTION vs BRAD RAFFENSPERGER

April 16, 2020

20

1 done through RealClear. Let's take it outside of
 2 RealClear. Have you designed and executed a study
 3 outside of anything you've done with
 4 RealClearPolitics?

5 A. Well, again, you know, I've written a
 6 book. I've written several book chapters, but if you
 7 want to narrow it down to peer-reviewed published
 8 literature, the answer is no, which I think is what
 9 you're getting at.

10 Q. Okay. So let's just kind of work through
 11 this a little bit to kind of parse it. RealClear or
 12 not, have you ever developed a hypothesis for a
 13 study?

14 A. Yes.

15 Q. What was that study?

16 A. I mean, every paper or every study you
 17 have, every paper you write for a course has a
 18 hypothesis in it, and developing hypotheses is one of
 19 the core things in statistical course work.

20 Q. And so you're referencing studies that
 21 you've done as it relates to your academic career,
 22 not necessarily something that you've done
 23 professionally outside of your academic career; is
 24 that right?

25 A. I said everything, just about everything

SEAN P. TRENDE
FAIR FIGHT ACTION vs BRAD RAFFENSPERGER

April 16, 2020

21

1 you do involves the formulation of a hypothesis that
 2 you're interested in pressing.

3 Q. So you're referencing exercises in your
 4 studies as you progress toward the degrees that you
 5 have, right? I'm talking about more so in a
 6 professional academic setting where you have reached
 7 wherever it is you're going, and then you start to
 8 generate and you ended it up as peer-reviewed content
 9 that you -- say, for instance, if you're on tenure
 10 track at an academic institution, those are the kind
 11 of things that you are going to be doing.

12 So what I'm trying to do is determine
 13 whether outside of your academic travels where you
 14 are seeking your degrees, master's degrees, your
 15 Ph.D. program, have you been a part of or have you
 16 participated in any study where you have designed and
 17 executed a study from start to finish.

18 A. Haven't authored any peer-reviewed
 19 literature, so that would include developing a
 20 hypothesis for peer-reviewed literature.

21 Q. During your testimony in North Carolina,
 22 the Common Cause case, you testified that you would
 23 not call yourself a political scientist; is that
 24 right?

25 A. I will accept your stipulation on that.

SEAN P. TRENDE
FAIR FIGHT ACTION vs BRAD RAFFENSPERGER

April 16, 2020

22

| | | |
|----|---|----------|
| 1 | Q. Do you recall that? | 10:33:33 |
| 2 | A. No. | 10:33:34 |
| 3 | Q. And you still do not consider yourself a | 10:33:35 |
| 4 | political scientist, correct? | 10:33:54 |
| 5 | A. I wouldn't call myself a political | 10:33:55 |
| 6 | scientist. | 10:34:00 |
| 7 | Q. Why not? | 10:34:00 |
| 8 | A. Because I'm not a political science | 10:34:01 |
| 9 | professor. | 10:34:04 |
| 10 | Q. Is that the only reason? | 10:34:06 |
| 11 | A. As I sit here, that's the only reason. | 10:34:09 |
| 12 | Q. Well, if you think of something else after | 10:34:19 |
| 13 | the fact, let Mr. Tyson know so he can get that | 10:34:22 |
| 14 | information on over to us. Okay? | 10:34:25 |
| 15 | A. Gotcha. | 10:34:27 |
| 16 | Q. I'm going to butcher this, but you do | 10:34:29 |
| 17 | consider yourself a psephologist; is that right? | 10:34:32 |
| 18 | A. Yeah, that's a word that seems to give a | 10:34:37 |
| 19 | lot of otherwise intelligent people unwarranted | 10:34:40 |
| 20 | confusion. So I don't really use it anymore, but, | 10:34:44 |
| 21 | yes, a psephologist is somebody who studies | 10:34:48 |
| 22 | elections. | 10:34:52 |
| 23 | Q. Did I pronounce it correctly? | 10:34:52 |
| 24 | A. You did. | 10:34:54 |
| 25 | Q. So I was kind of grinding on the | 10:34:56 |

SEAN P. TRENDE
FAIR FIGHT ACTION vs BRAD RAFFENSPERGER

April 16, 2020

23

1 pronunciation. You are a psephologist in your own
 2 estimation, right?

3 A. I study elections, and a psephologist is
 4 somebody who studies elections, so yes.

5 Q. There's no academic degree in psephology,
 6 is there, to your knowledge?

7 A. No. There's no academic degree in
 8 redistricting either, but you can be a redistrictter.
 9 It doesn't make the word any less real.

10 Q. Sure. And I'm not challenging whether
 11 it's real or not; just trying to understand. So
 12 there's no academic curriculum one would follow in
 13 order to become a psephologist; is that right?

14 A. Ohio State doesn't offer any sort of
 15 accreditation or whatever in elections or minors or
 16 anything like that. I can't speak to other programs.

17 Q. Are there any professional organizations
 18 that psephologists typically belong to or associate
 19 with?

20 A. I mean, if you're a Ph.D. who studies
 21 elections, you would be probably a member of APSA or
 22 some of the other professional organizations.

23 Q. What does APSA stand for?

24 A. American Political Science Association.

25 Q. Are you a member?

10:35:00

10:35:05

10:35:05

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SEAN P. TRENDE
FAIR FIGHT ACTION vs BRAD RAFFENSPERGER

April 16, 2020
24

1 A. I have been. I can't remember if I am 10:36:28
2 right now or not. 10:36:30
3 Q. Any other professional organizations for 10:36:33
4 psephologists? 10:36:37
5 A. Well, there's associations for political 10:36:37
6 scientists that if you are someone who studies 10:36:40
7 elections you would be a member of. They aren't 10:36:43
8 specifically for people who study elections. 10:36:48
9 Q. Any other professional organizations that 10:36:51
0 you're a member of where one of the primary 10:36:55
1 characteristics is that the member study elections? 10:36:59
2 A. No. Not that I can think of. 10:37:03
3 Q. There's no agreed-upon methodology by 10:37:06
4 which psephologists make their predictions, right? 10:37:18
5 A. Yeah. There's a variety of approaches. 10:37:21
6 Q. You've mentioned that you don't belong to 10:37:31
7 the APSA. How about the Association of Political 10:37:41
8 Theory? 10:37:44
9 A. I didn't say I didn't belong to APSA. I 10:37:45
20 said I couldn't remember if I still do. 10:37:49
21 Q. Okay. 10:37:51
22 A. I don't belong to the Association of 10:37:52
23 Political Theorists. 10:37:55
24 Q. Do you do a fair amount of public 10:38:06
25 speaking? 10:38:14

SEAN P. TRENDE
FAIR FIGHT ACTION vs BRAD RAFFENSPERGER

April 16, 2020

25

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| 1 | A. Not right now but I have, yes. | 10:38:14 |
| 2 | Q. In the last two years have you been fairly | 10:38:21 |
| 3 | active? | 10:38:24 |
| 4 | A. It's been -- it's slowed down considerably | 10:38:24 |
| 5 | in the age of Trump, but I do speeches. | 10:38:29 |
| 6 | Q. Why has it slowed down in the age of | 10:38:33 |
| 7 | Trump? | 10:38:36 |
| 8 | A. We think that politics has become so nasty | 10:38:36 |
| 9 | and polarized that event planners are reluctant to | 10:38:44 |
| 10 | put political speakers on the agenda. | 10:38:49 |
| 11 | Q. Who has been reluctant to put political | 10:38:52 |
| 12 | speakers on the agenda? | 10:38:57 |
| 13 | A. Event planners. | 10:38:58 |
| 14 | Q. Would you consider yourself a political | 10:38:59 |
| 15 | speaker? | 10:39:03 |
| 16 | A. I do political speaking. | 10:39:03 |
| 17 | Q. When you say "we believe," are you talking | 10:39:05 |
| 18 | about RealClearPolitics? | 10:39:15 |
| 19 | A. No. Some other political speakers that | 10:39:17 |
| 20 | I've talked to as well have noticed a downturn. | 10:39:19 |
| 21 | Obviously, with the shutdowns, there's nothing going | 10:39:29 |
| 22 | on. | 10:39:31 |
| 23 | Q. Sure. So would you agree with the | 10:39:32 |
| 24 | sentiment that the political climate has gotten so -- | 10:39:54 |
| 25 | what was the word you used, nasty? | 10:39:58 |

SEAN P. TRENDE
FAIR FIGHT ACTION vs BRAD RAFFENSPERGERApril 16, 2020
26

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| 1 | A. Yes. | 10:40:01 |
| 2 | Q. Would you agree with that sentiment? | 10:40:01 |
| 3 | A. I think the political climate right now is | 10:40:04 |
| 4 | pretty nasty. | 10:40:07 |
| 5 | Q. Unnecessarily so? | 10:40:08 |
| 6 | A. I think some of it is deserved. | 10:40:10 |
| 7 | Q. Like what? | 10:40:15 |
| 8 | A. I don't think too much of the current | 10:40:17 |
| 9 | president. I understand why people are horrified. | 10:40:19 |
| 10 | Q. Turning to your report in other cases in | 10:40:25 |
| 11 | which you've testified, I think we covered -- what | 10:40:44 |
| 12 | was the North Carolina case? -- Common Cause versus | 10:40:48 |
| 13 | Rucho. You also did work in Dixon versus Rucho; is | 10:40:54 |
| 14 | that right? | 10:40:59 |
| 15 | A. That's right. | 10:40:59 |
| 16 | Q. Seems to be about a 2011 case. Does that | 10:41:00 |
| 17 | sound right timewise? | 10:41:05 |
| 18 | A. I think it was two thousand -- about, | 10:41:07 |
| 19 | yeah. | 10:41:16 |
| 20 | Q. You indicated in that report that you also | 10:41:16 |
| 21 | submitted a report in the Covington case. Do you | 10:41:18 |
| 22 | recall that? | 10:41:20 |
| 23 | A. I wouldn't -- I don't think I would have | 10:41:21 |
| 24 | said that in the Dixon v. Rucho report, but I did | 10:41:23 |
| 25 | file an expert report in the Covington case. | 10:41:27 |

SEAN P. TRENDE
FAIR FIGHT ACTION vs BRAD RAFFENSPERGER

April 16, 2020

27

1 Q. And both of those cases, Dixon and
 2 Covington, involved challenges to maps for the North
 3 Carolina state legislative bodies; is that right?
 4 A. Yes. They were identical cases. Well,
 5 functionally identical cases I should say.

6 Q. And you testified for the State defending
 7 the maps as drawn, correct?

8 A. I testified for the State. My opinion was
 9 that the maps would tend to elect Republicans. I
 10 don't know if that's really defending the maps as
 11 drawn.

12 Q. Have you ever testified for a plaintiff in
 13 a case?

14 A. No. I've never been asked.

15 Q. In the Covington case, was there a trial?

16 A. Yes.

17 Q. Did you testify at trial?

18 A. No.

19 Q. Why not; do you know?

20 A. My understanding is that since the
 21 Covington case and Dixon case were functionally the
 22 same, there was an agreement between the parties to
 23 bring in the record from the Dixon case. And when
 24 the record from the Dixon case got brought in and
 25 admitted, my report from Dixon got brought in and

SEAN P. TRENDE
FAIR FIGHT ACTION vs BRAD RAFFENSPERGER

April 16, 2020

28

1 admitted.

2 And so, since my testimony was already
 3 admitted into evidence or my written testimony was
 4 already admitted into evidence, they figured they
 5 could argue from that.

6 Q. Did you testify in the Dixon case?

7 A. No.

8 Q. And did the Dixon case, to your knowledge,
 9 go to trial?

10 A. I believe it did 'cause it went up to -- I
 11 don't know if there was a trial or just an
 12 evidentiary hearing, but it went up to the Supreme
 13 Court of North Carolina, so there was something.

14 Q. In the Dixon or Covington cases, were
 15 there any motions to exclude or limit your opinions?

16 A. I didn't even get deposed in Dixon, so I
 17 would imagine there wasn't any motion in limine
 18 there. I believe there was in Covington, but I'm not
 19 sure.

20 Q. In Covington do you know what the result
 21 of the motion to exclude or limit was?

22 A. Because my report got brought in as
 23 evidence, I don't know if the Court ended up ruling
 24 on it, but it might have. I don't know.

25 Q. It might have what?

SEAN P. TRENDE
FAIR FIGHT ACTION vs BRAD RAFFENSPERGER

April 16, 2020

29

1 A. The Court might have ruled on the motion.
 2 I don't think it did because they brought in my
 3 report from Rucho -- not Rucho -- from Dixon as
 4 evidence. So I don't think the Court ended up
 5 ruling.

6 Q. Is it fair that most of your work as an
 7 expert has been in redistricting cases?

8 A. Hum. It's certainly been a fair amount.
 9 I don't know if it's been a majority.

10 Q. So how does your work in redistricting
 11 cases translate to a case like this where the issue
 12 on which you are offering an opinion is simply
 13 whether the lines to vote were longer in the majority
 14 or minority districts than -- I'm sorry -- longer in
 15 majority-minority districts than they were in
 16 majority-majority districts?

17 MR. TYSON: I'll object to form.

18 Q. (By Mr. DuBose) You understand the
 19 question, right?

20 A. I think I understand the question. I just
 21 don't know if I know the answer.

22 Q. Need a second?

23 A. No. That's something that depends on how
 24 the lawyers are going to argue it. I mean, I think
 25 to the extent that I've been admitted, I suppose if I

SEAN P. TRENDE
FAIR FIGHT ACTION vs BRAD RAFFENSPERGER

April 16, 2020

30

1 were putting on my lawyer hat, to the extent that
2 I've been admitted as an expert in other cases, it's
3 informative -- in other election-related cases, it's
4 informative of whether I should be admitted here, but
5 that's getting down into the weeds.

6 Q. No. You can leave your lawyer hat in the
7 closet. Let's go with the expert hat. So how does
8 your work in redistricting cases translate to what
9 you're doing in this case?

10 A. Well, I think --

11 Q. Is it completely unrelated, or are we
12 drawing from a different pool of talents here?

13 MR. TYSON: Objection.

14 Q. (By Mr. DuBose) Or does it build on the
15 work that you've done in the past on the
16 redistricting cases in some way? If so, if that's
17 your sentiment, if that's what you believe,
18 explain --

19 A. I would say that to the extent that Dr. --
20 I would say to the extent that Dr. Mayer's work in
21 redistricting cases is relevant to his work here,
22 mine is. To the extent it isn't, mine isn't.

23 Q. Dr. Mayer?

24 A. Yes.

25 Q. Can you explain that?

SEAN P. TRENDE
FAIR FIGHT ACTION vs BRAD RAFFENSPERGER

April 16, 2020

31

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| <p>1 A. He's done work in redistricting cases too.</p> <p>2 If his work in redistricting cases is utterly</p> <p>3 irrelevant to his work in this case, then, I suppose</p> <p>4 mine is too. I don't know if that's true. I think</p> <p>5 there are general approaches, statistical approaches,</p> <p>6 that get brought in. I think there are -- I think</p> <p>7 you look at things under the general umbrella of</p> <p>8 American politics which is the actual kind of</p> <p>9 political science subcategory, and even elections,</p> <p>10 and it's a relevant consideration. But at the end of</p> <p>11 the day, this is a legal question. So I don't know</p> <p>12 exactly how I can answer it.</p> <p>13 Q. What's a legal question?</p> <p>14 A. The question of relevance.</p> <p>15 Q. Well, I'm not using relevance, and if I</p> <p>16 did, I didn't intend to use relevance in my question.</p> <p>17 I wanted to ask you about your work in redistricting;</p> <p>18 how does that relate to or translate to what you're</p> <p>19 doing in this case.</p> <p>20 So I'm not asking for a legal opinion.</p> <p>21 I'm not asking for that. If I did, Bryan certainly</p> <p>22 would have objected. So I'm not asking for a legal</p> <p>23 opinion. I'm just asking you to explain how your</p> <p>24 past experience in redistricting cases translates to</p> <p>25 what you're doing in this case.</p> | <p>10:47:07</p> <p>10:47:11</p> <p>10:47:16</p> <p>10:47:18</p> <p>10:47:21</p> <p>10:47:26</p> <p>10:47:30</p> <p>10:47:34</p> <p>10:47:36</p> <p>10:47:42</p> <p>10:47:47</p> <p>10:47:51</p> <p>10:47:54</p> <p>10:47:56</p> <p>10:48:02</p> <p>10:48:06</p> <p>10:48:10</p> <p>10:48:14</p> <p>10:48:19</p> <p>10:48:20</p> <p>10:48:23</p> <p>10:48:27</p> <p>10:48:30</p> <p>10:48:34</p> <p>10:48:38</p> |
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SEAN P. TRENDE
FAIR FIGHT ACTION vs BRAD RAFFENSPERGER

April 16, 2020

32

1 A. Mr. Tyson did object, but I think I've 10:48:40
 2 answered your question. There's a broader approach 10:48:46
 3 to statistics that if we're going to avoid the word 10:48:49
 4 relevant, we will say relates to all of American 10:48:57
 5 politics and then the subspecialty of elections which 10:49:01
 6 is what it falls under. And I think to the extent 10:49:05
 7 that Dr. Mayer's work in redistricting cases is 10:49:10
 8 relevant here, mine probably is too. 10:49:14

9 Q. Now, refresh my recollection on the Rucho 10:49:25
 10 case. You said you do not recall testifying in 10:49:29
 11 trial? 10:49:33

12 A. The Dixon -- 10:49:33

13 Q. Common Cause. Common Cause, I'm sorry, 10:49:34
 14 versus Rucho. 10:49:37

15 A. Common Cause versus Rucho, that's the -- 10:49:38
 16 that's the gerrymandering case? 10:49:43

17 Q. Okay. 10:49:46

18 A. I'm asking you. There's a lot of cases -- 10:49:47

19 Q. It should have been running in or about 10:49:50
 20 October of 2017. 10:49:54

21 A. I did testify at trial in that case. 10:49:55

22 Q. Three-judge panel; is that what you 10:50:00
 23 recall? 10:50:02

24 A. Yes. 10:50:02

25 Q. So before your testimony in that case, you 10:50:03

SEAN P. TRENDE
FAIR FIGHT ACTION vs BRAD RAFFENSPERGER

April 16, 2020

33

1 had finished your master's in applied statistics,
 2 right? 10:50:07

3 A. No. 10:50:11

4 Q. No? 10:50:11

5 A. No. I wasn't in the program yet. 10:50:12

6 Q. When you say "the program," the applied
 7 statistics program? 10:50:15

8 A. If I recall correctly, and I may not, but
 9 if I recall correctly, at that point I had done some
 10 of the course work and was hoping to get into the
 11 program but was not yet in the program. 10:50:19

12 Q. You mentioned Dr. Mayer a few minutes ago.
 13 Have you reviewed the report that he generated in
 14 this case? 10:50:38

15 A. I think I read it once. 10:50:44

16 Q. Outside of the report that you read, were
 17 you familiar with Dr. Mayer and his background
 18 generally? 10:50:48

19 A. I know he's a political scientist at
 20 Wisconsin. I think he teaches election classes. I
 21 read his paper on early voting with Burden and Canon.
 22 Most of my interaction has been in the Wisconsin
 23 redistricting case though. 10:51:09

24 Q. So in Common Cause versus Rucho, you were
 25 proffered as an expert in U.S. elections including 10:51:12

SEAN P. TRENDE
FAIR FIGHT ACTION vs BRAD RAFFENSPERGER

April 16, 2020

34

1 congressional elections, analysis of electoral
 2 history, and redistricting. Does that sound about
 3 right?

4 A. You know, that was three years ago. So,
 5 again, it's one of those, I'll accept your
 6 stipulation. I'm assuming you've read the
 7 transcripts recently.

8 Q. And that was a redistricting case, right?

9 A. That was a political gerrymandering case,
 10 yep.

11 Q. Let me ask you about your work in NAACP
 12 versus McCrory. Do you remember that case?

13 A. Yes.

14 Q. Do you recall offering the opinion that
 15 voting reforms contained in HB589 placed the state
 16 within the mainstream of American voting laws; do you
 17 recall that?

18 A. Yes.

19 Q. Would you consider what you offered as
 20 that opinion to be a legal opinion?

21 A. I haven't given much thought to that.

22 MR. TYSON: Object to form.

23 Q. (By Mr. DuBose) Want to take a second and
 24 think about it?

25 A. No. I don't even know how to answer that

SEAN P. TRENDE
FAIR FIGHT ACTION vs BRAD RAFFENSPERGER

April 16, 2020

35

1 question. I mean, it's expert opinion. 10:52:50

2 Q. Not a legal opinion? 10:52:54

3 A. It involved analysis of statutes, so it 10:52:57
4 was an opinion about law, but I don't know if it's a 10:53:02
5 legal opinion. I mean, I think a legal opinion is an 10:53:05
6 opinion about law in the same way that a red herring 10:53:10
7 is a scarlet fish. So... 10:53:138 Q. Did the opposing attorneys attempt to 10:53:16
9 exclude or limit your expert report or opinion in 10:53:26
10 that case? 10:53:29

11 A. Yes. 10:53:30

12 Q. What was the result of that challenge? 10:53:31

13 A. I don't think it was granted to any 10:53:34
14 extent, and it was denied with respect to opinion 1, 10:53:42
15 is my recollection, but that was, again, four years 10:53:47
16 ago -- or six years ago now. 10:53:49

17 Q. Was it granted as to any other opinion? 10:53:52

18 A. I don't believe it was. 10:53:58

19 Q. When you practiced law did you ever handle 10:54:02
20 a case that involved either voting rights or 10:54:07
21 redistricting? 10:54:12

22 A. No. 10:54:12

23 Q. So your opinion in the NAACP versus 10:54:13
24 McCrory wasn't based on any legal experience that 10:54:24
25 you've had, right? 10:54:28

SEAN P. TRENDE
FAIR FIGHT ACTION vs BRAD RAFFENSPERGER

April 16, 2020

36

1 A. Oh, I won't agree with that. I mean, my
 2 legal experience is how I learned to read and
 3 interpret a statute, but I've never handled a voting
 4 rights case.

5 Q. And to be clear, then, you concede then
 6 that the opinion you provided in the NAACP versus
 7 McCrory involved you reading and interpreting
 8 statutes?

9 A. Yes.

10 Q. In NAACP versus McCrory did the Court
 11 prevent you from testifying about your opinion as to
 12 North Carolina law being consistent with other laws?

13 A. I don't remember the Court preventing me
 14 from testifying on anything, but I'm assuming you've
 15 read the transcripts more recently than I have.

16 Q. Notwithstanding you providing
 17 interpretations of law in NAACP versus McCrory, you
 18 do understand that interpretation of law is typically
 19 the province of the judge and Court, right?

20 MR. TYSON: I'll object to form.

21 THE WITNESS: Legal conclusions are
 22 typically the province of the Court I'm sure.

23 Q. (By Mr. DuBose) So in this case do you
 24 intend to tell Judge Jones what the law is and how
 25 that should govern his decisions?

SEAN P. TRENDE
FAIR FIGHT ACTION vs BRAD RAFFENSPERGER

April 16, 2020

37

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|----|--|----------|
| 1 | MR. TYSON: I'll object to form. | 10:56:26 |
| 2 | THE WITNESS: Yeah, I don't know what | 10:56:27 |
| 3 | Mr. Tyson's legal strategy is or what he would | 10:56:30 |
| 4 | plan for me at trial if I were to testify, but I | 10:56:34 |
| 5 | don't think anything to that effect is in my | 10:56:37 |
| 6 | report. | 10:56:39 |
| 7 | Q. (By Mr. DuBose) Did anyone assist you in | 10:56:44 |
| 8 | drafting the report in this case? | 10:56:48 |
| 9 | A. No. | 10:56:49 |
| 10 | Q. Your report. | 10:56:50 |
| 11 | A. No. No one assisted me. | 10:56:53 |
| 12 | Q. Did you generate any drafts or versions | 10:56:55 |
| 13 | prior to the final version? | 10:56:59 |
| 14 | A. I actually can't remember if there were | 10:57:07 |
| 15 | any edits on this one. | 10:57:17 |
| 16 | Q. Did you draft it on your personal | 10:57:19 |
| 17 | computer? | 10:57:22 |
| 18 | A. Yes. | 10:57:22 |
| 19 | Q. Do you recall sharing any drafts with | 10:57:24 |
| 20 | anyone? | 10:57:30 |
| 21 | A. If there was a draft, it would have gone | 10:57:31 |
| 22 | to Mr. Tyson and no one else. | 10:57:39 |
| 23 | Q. Do you recall receiving edits on that | 10:57:41 |
| 24 | draft? | 10:57:44 |
| 25 | A. Like I said, I can't remember if there | 10:57:44 |

SEAN P. TRENDE
FAIR FIGHT ACTION vs BRAD RAFFENSPERGER

April 16, 2020

38

1 were edits on this draft, on any draft or not, or if
2 we just went ahead and submitted it.

3 Q. Does this opinion that you provided in
4 this case contain all of your opinions as to any
5 matter related to this lawsuit?

6 A. Like formal opinions?

7.0. Formal and informal.

8 A. I mean, I don't think you can go through a
9 case without developing informal opinions, but as to
10 anything I would testify to at trial, I imagine it's
11 contained in here.

12 Q. That's what I want to know.

13 A. Yeah, any -- like I said, I can't pin
14 Mr. Tyson down, and I have no idea what his legal
15 strategy is or what my -- what any direct at trial
16 would look like, but certainly when I write an expert
17 report, the idea is to get anything that I would
18 testify to out on paper.

19 Q. And your report contains the substance of
20 the facts you relied on to form your opinions; is
21 that correct?

22 A. I think I took the facts from Dr. Graves'
23 report.

24 Q. All right.

25 A. He helpfully in Appendix II provided the

SEAN P. TRENDE
FAIR FIGHT ACTION vs BRAD RAFFENSPERGER

April 16, 2020

39

1 dataset.

10:59:21

2 Q. Does your opinion rely on any documents or
3 facts that are not cited in the report?

10:59:22

10:59:25

4 A. I always hate that question because, of
5 course, especially with respect to statistical
6 things, there's things you learn along the way that
7 you wouldn't include in a report, but as far as facts
8 on the ground as far as specific citations, I believe
9 they are all in the report.

10:59:34

10:59:37

10:59:40

10:59:42

10:59:48

10:59:53

10:59:54

11:00:03

11:00:13

11:00:16

11:00:19

11:00:21

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11:00:47

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11 Q. Were you asked to provide any opinion that
12 is not reflected in your report?

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25

MR. DUBOSE: In this case?

MR. TYSON: In this case, yes. He was a

consulting expert prior to being retained as a

trial expert, and so I want to make sure we're

limiting it to the retention on these particular

issues.

MR. DUBOSE: Was he disclosed in both

capacities as a consulting and testifying

SEAN P. TRENDE
FAIR FIGHT ACTION vs BRAD RAFFENSPERGER

April 16, 2020

40

1 expert?

11:00:53

2 MR. TYSON: Well, no, we're not going to
3 disclose consulting expert -- we disclosed him
4 as a testifying expert at the time we disclosed
5 him, whenever that was in the docket.

11:00:53

11:00:55

11:00:55

11:00:57

6 MR. DUBOSE: Okay. And are those -- were
7 those pursuant to separate engagement letters
8 or...

11:01:00

11:01:05

11:01:08

9 MR. TYSON: I don't recall. I can look,
10 but it was a period of time where he was
11 retained prior to being disclosed on the docket
12 and provided some nontestifying services for us.
13 I just want to make sure we're limiting to the
14 time he was disclosed going forward.

11:01:09

11:01:10

11:01:13

11:01:15

11:01:18

11:01:21

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11:01:50

SEAN P. TRENDE
FAIR FIGHT ACTION vs BRAD RAFFENSPERGER

April 16, 2020

41

1 opinion that you declined to provide?

11:01:54

2 A. So this isn't me -- this is me protecting
3 myself and not me playing hide the ball. I don't
4 remember any -- we can call it maybe a big picture.
5 Like in the past I've refused to do photographic
6 identification cases. Like I would consider that a
7 big picture opinion that I would decline.

11:02:01

11:02:14

11:02:19

11:02:22

11:02:26

11:02:28

8 I don't remember anything like that.

11:02:30

9 There may have been smaller issues where I said no,
10 like the data don't support that or whatever, but I
11 can't think of anything to that nature.

11:02:32

11:02:35

11:02:40

12 Q. You said there may have been smaller
13 issues in this case?

11:02:42

11:02:45

14 A. You always have conversations with people
15 who don't have statistical backgrounds, and they
16 might ask you about something, and you say no. Like
17 I said, I'm honestly not playing hide the ball here.
18 I can't think of anything of that nature in this
19 case, but I also wouldn't remember it. I would
20 remember something on the order of I don't like to
21 testify in photo I.D. cases.

11:02:46

11:02:49

11:02:52

11:02:59

11:03:03

11:03:05

11:03:08

11:03:10

22 Q. Were you asked to take any opinions out of
23 this report before finalizing it?

11:03:13

11:03:18

11:03:20

24 A. I don't think so.

25 Q. Were you asked not to opine on any subject

11:03:23

SEAN P. TRENDE
FAIR FIGHT ACTION vs BRAD RAFFENSPERGER

April 16, 2020

42

| | | |
|----|---|----------|
| 1 | matter related to this litigation? | 11:03:26 |
| 2 | A. Can you repeat that? | 11:03:28 |
| 3 | Q. Sure. Were you asked not to opine on any | 11:03:31 |
| 4 | subject matter related to this litigation? | 11:03:33 |
| 5 | A. No. | 11:03:38 |
| 6 | Q. Were you asked to change any opinion in | 11:03:39 |
| 7 | any way that you declined to do? | 11:03:41 |
| 8 | A. It's kind of the same answer. There might | 11:03:43 |
| 9 | have been little things where I said no, we can't | 11:03:50 |
| 10 | word it that way. I don't remember anything like | 11:03:55 |
| 11 | that and certainly not a major headline opinion. | 11:03:59 |
| 12 | Q. Let's talk about RealClearPolitics.com. | 11:04:03 |
| 13 | You've been employed by RealClearPolitics since 2009? | 11:04:09 |
| 14 | A. That's right. | 11:04:15 |
| 15 | Q. And you're still currently employed by | 11:04:15 |
| 16 | them? | 11:04:17 |
| 17 | A. That's right. | 11:04:18 |
| 18 | Q. And are they an exclusively online | 11:04:18 |
| 19 | publication? | 11:04:24 |
| 20 | A. Yeah, I think that's fair. | 11:04:24 |
| 21 | Q. And it's a Web site that gathers together | 11:04:36 |
| 22 | and publishes political stories and content; is that | 11:04:38 |
| 23 | correct? | 11:04:43 |
| 24 | A. The company does produce a Web site, yes. | 11:04:43 |
| 25 | Q. Sometimes described as a one-stop shop for | 11:04:51 |

SEAN P. TRENDE
FAIR FIGHT ACTION vs BRAD RAFFENSPERGER

April 16, 2020

43

| | | |
|----|---|----------|
| 1 | political readers? | 11:04:55 |
| 2 | A. I think that tag line has been used, yeah. | 11:04:58 |
| 3 | Q. And you publish content on the site? | 11:05:01 |
| 4 | A. Yes. | 11:05:09 |
| 5 | Q. How would you characterize the content | 11:05:09 |
| 6 | that you publish on the site? | 11:05:13 |
| 7 | A. It is generally political analysis, | 11:05:15 |
| 8 | specifically related to elections usually. | 11:05:19 |
| 9 | Q. And are you still a senior elections | 11:05:24 |
| 10 | analyst with RealClearPolitics? | 11:05:29 |
| 11 | A. Yes. | 11:05:32 |
| 12 | Q. As a senior elections analyst, you rate | 11:05:33 |
| 13 | the competitiveness of various races around the | 11:05:36 |
| 14 | country; is that correct? | 11:05:39 |
| 15 | A. Yes. | 11:05:41 |
| 16 | Q. Look at various polls in doing that? | 11:05:41 |
| 17 | A. Yes. | 11:05:44 |
| 18 | Q. Do you evaluate those polls statistically? | 11:05:44 |
| 19 | A. Yes. | 11:05:49 |
| 20 | Q. Do you conduct Meta-Analysis of those | 11:05:51 |
| 21 | polls? | 11:05:55 |
| 22 | A. Meta-Analysis is one of those terms of | 11:05:56 |
| 23 | art, and it's an area of statistics that I actually | 11:06:05 |
| 24 | don't know a whole lot about. We average polls, | 11:06:09 |
| 25 | which I suppose you could consider a Meta-Analysis. | 11:06:12 |

SEAN P. TRENDE
FAIR FIGHT ACTION vs BRAD RAFFENSPERGER

April 16, 2020

44

1 But, like I said, again, I'm not trying to hide the
 2 ball. It's just you're getting into a term of art
 3 that I don't know about.

4 Q. Does anyone at RealClearPolitics perform
 5 that analysis?

6 A. Again, if you consider a poll average a
 7 Meta-Analysis then yes, but if not, then no.

8 Q. Is your work with RealClearPolitics
 9 primarily an analysis of races for federal offices,
 10 or do you analyze any state races too?

11 A. Primarily federal offices.

12 Q. Are there some state races peppered in
 13 there as well?

14 A. Yes.

15 Q. If you had to put a percentage on it, what
 16 percentage would you say is federal, and what
 17 percentage would you say is state?

18 A. Maybe 70 percent federal, 75 percent
 19 federal.

20 Q. Did you conduct any published analysis of
 21 the 2018 gubernatorial race in Georgia?

22 A. I don't remember.

23 Q. Have you ever done any consulting for
 24 campaigns?

25 A. No.

SEAN P. TRENDE
FAIR FIGHT ACTION vs BRAD RAFFENSPERGER

April 16, 2020

45

1 Q. Have you ever been asked to do any
2 consulting for campaigns?

3 A. I don't think so. A pollster asked me to
4 do a workup of a Senate race in a state -- I can't
5 remember which state -- I think it was in 2014, and I
6 declined.

7 Q. Why did you decline?

8 A. Because if we're going to cover elections,
9 it would be a conflict to be actively consulting for
10 a specific campaign. And, above that, they offered
11 me \$500 which didn't seem worth it.

12 Q. Okay. And, I'm sorry, I can't remember
13 what you answered to this question about whether you
14 published analysis of the 2018 gubernatorial race in
15 Georgia.

16 A. I don't remember it, but I can't remember
17 half of what I wrote for 2018; probably more than
18 half.

19 Q. Did you conduct any unpublished analysis
20 of the 2018 gubernatorial race in Georgia?

21 A. Not that I can think of. I mean,
22 actually, if we're talking -- when you say
23 unpublished, I'm assuming run like a thoroughly, like
24 an article-length summary. You know, we were rating
25 the competitiveness of the gubernatorial races. So I

SEAN P. TRENDE
FAIR FIGHT ACTION vs BRAD RAFFENSPERGER

April 16, 2020
46

1 certainly would have looked at the governor's race in
2 2018 through that lens, but I don't think there were
3 any article and write-ups.

4 Q. Yeah. I'm asking as to any content
5 whatsoever where you --

6 A. Note --

7 Q. What's that?

8 A. Yeah, so if it's any content whatsoever,
9 you know, we rated the competitiveness of the 2018
10 Georgia gubernatorial race, and I would have been
11 involved in that. So to that effect, yeah, I did
12 analyze the Georgia governor's race.

13 Q. When you say you rated the
14 competitiveness, can you describe what
15 that rating would consist of?

16 A. So for statewide races we usually have
17 robust polling, and we mostly rely on our poll
18 averages for those. But for races that are kind of
19 at the periphery, you know, our cutoff for a toss-up
20 is usually about 5 points. So if there's a race
21 that's 4.9, we would dive in a little deeper than
22 that.

23 And, of course, we're always having
24 conversations about these races, the competitive
25 races and what we think it's going to turn out but

SEAN P. TRENDE
FAIR FIGHT ACTION vs BRAD RAFFENSPERGER

April 16, 2020

47

| | | |
|----|---|----------|
| 1 | nothing that would have been committed to writing. | 11:11:20 |
| 2 | Q. Would there have been any characterization | 11:11:23 |
| 3 | by you anywhere on the candidates for the Georgia | 11:11:31 |
| 4 | 2018 gubernatorial race? | 11:11:38 |
| 5 | A. Beyond the race ratings? I don't think | 11:11:42 |
| 6 | so. I think there's a time series of how races were | 11:11:47 |
| 7 | rated somewhere on the Web site, but I don't know. I | 11:11:51 |
| 8 | may be involved in the race ratings. I am in no way | 11:11:57 |
| 9 | involved in the archiving of our site's data, and the | 11:12:01 |
| 10 | archiving is a mess. | 11:12:06 |
| 11 | Q. The content you create and publish on | 11:12:08 |
| 12 | RealClearPolitics is not peer reviewed, is it? | 11:12:15 |
| 13 | A. That's correct. | 11:12:18 |
| 14 | Q. Is it reviewed by an editor or copy editor | 11:12:18 |
| 15 | before it's published? | 11:12:23 |
| 16 | A. Both. | 11:12:24 |
| 17 | Q. The founder and CEO of RealClearPolitics | 11:12:25 |
| 18 | is John McIntyre? | 11:12:41 |
| 19 | A. He's the cofounder, yeah. | 11:12:43 |
| 20 | Q. Cofounder. Do you have a close | 11:12:45 |
| 21 | relationship with him, Mr. McIntyre? | 11:12:49 |
| 22 | A. Yes. | 11:12:51 |
| 23 | Q. You've been described as Mr. McIntyre's | 11:12:52 |
| 24 | right-hand man on occasion? | 11:12:55 |
| 25 | A. Yes. | 11:12:57 |

SEAN P. TRENDE
FAIR FIGHT ACTION vs BRAD RAFFENSPERGER

April 16, 2020

48

1 Q. And do you still enjoy a close
2 relationship with Mr. McIntyre today?

3 A. Fairly close, yes.

4 Q. In Paragraph 11 of your report, it details
5 how RealClearPolitics is, quote, cited by the most
6 influential voices in politics, and it lists the New
7 York Times, Fox News, the Almanac of American
8 Politics, and the Wall Street Journal; is that right?

9 A. Just a second. Let me pull up my report.

10 MR. TYSON: Do we want to go ahead and
11 mark the report as an exhibit?

12 MR. DUBOSE: Sure, let's go ahead. So
13 I'll mark at this time the expert report of Sean
14 P. Trende.

15 (Plaintiffs' Exhibit 2 was marked for
16 identification.)

17 THE WITNESS: Oh, yeah, that's in
18 Paragraph 11.

19 Q. (By Mr. DuBose) So as your expert report
20 lays out, the RealClearPolitics Website is cited by
21 news outlets from all sides of the political
22 spectrum, both conservative and liberal; is that kind
23 of what you're saying there?

24 A. Yes.

25 Q. You also note in Paragraph 20 that you've

SEAN P. TRENDE
FAIR FIGHT ACTION vs BRAD RAFFENSPERGER

April 16, 2020

49

| | | |
|----|---|----------|
| 1 | appeared on Fox News and MSNBC? | 11:14:19 |
| 2 | A. Yes. | 11:14:22 |
| 3 | Q. Isn't it true, Mr. Trende, that | 11:14:23 |
| 4 | RealClearPolitics has secretly run a Facebook page | 11:14:27 |
| 5 | called Conservative Country in the past? | 11:14:32 |
| 6 | A. No, that's not true. | 11:14:35 |
| 7 | Q. That's not true? | 11:14:36 |
| 8 | A. To my understanding, at least, that is not | 11:14:37 |
| 9 | true. | 11:14:39 |
| 10 | Q. And what do you base that understanding | 11:14:40 |
| 11 | on? | 11:14:41 |
| 12 | A. Conversations with Mr. McIntyre. | 11:14:42 |
| 13 | Q. And at some point were the denials of | 11:14:45 |
| 14 | being involved with Conservative Country published in | 11:14:51 |
| 15 | any way? | 11:14:57 |
| 16 | A. No. Not to my knowledge. | 11:14:57 |
| 17 | Q. So those were just private denials between | 11:14:59 |
| 18 | you and Mr. McIntyre as to RealClearPolitics' | 11:15:03 |
| 19 | involvement with the Facebook page Conservative | 11:15:07 |
| 20 | Country, right? | 11:15:11 |
| 21 | A. Yes. | 11:15:11 |
| 22 | Q. You do know what the Facebook page | 11:15:12 |
| 23 | Conservative Country is, right? | 11:15:18 |
| 24 | A. I've heard of it now. | 11:15:18 |
| 25 | Q. But you've heard of it before today as | 11:15:20 |

SEAN P. TRENDE
FAIR FIGHT ACTION vs BRAD RAFFENSPERGER

April 16, 2020

50

1 well, correct?

11:15:22

2 A. I heard of it for the first time the day
3 that Daily Beast story dropped.

11:15:23

11:15:25

4 Q. So you're familiar with the story that
5 kind of characterizes the content of the Facebook
6 page Conservative Country where it contains far right
7 memes and Islamophobic smears?

11:15:28

11:15:30

11:15:33

11:15:39

8 MR. TYSON: Object.

11:15:45

9 Q. (By Mr. DuBose) You're aware of that?

11:15:46

11:15:48

10 MR. TYSON: Object to form.

11:15:49

11:15:51

11 THE WITNESS: I read the Daily Beast
12 story, yeah.

11:15:51

11:15:53

11:15:55

11:15:57

11:16:02

11:16:06

11:16:11

11:16:12

11:16:13

11:16:16

11:16:16

11:16:24

11:16:24

11:16:24

SEAN P. TRENDE
FAIR FIGHT ACTION vs BRAD RAFFENSPERGER

April 16, 2020

51

1 relevance. I'm not really sure where we're 11:16:24
 2 going. He said he doesn't have any involvement 11:16:24
 3 in the page and doesn't have any responsibility 11:16:24
 4 for it. I mean, we're asking if he's seen 11:16:28
 5 things. I just don't understand where that 11:16:29
 6 fits. 11:16:29

7 MR. DUBOSE: Well, obviously his company 11:16:34
 8 does. 11:16:34

9 MR. TYSON: He said his company has not -- 11:16:36

10 MR. DUBOSE: His company does and in his 11:16:39
 11 expert report he goes to great lengths too to 11:16:41
 12 lay out that he is involved on both sides of the 11:16:44
 13 political spectrum. But what's very clear from 11:16:47
 14 his Facebook page is that his company is 11:16:50
 15 involved in a far right, you know, outfit, and 11:16:53
 16 some of the content there is -- I think cuts 11:16:58
 17 directly against what's being laid out in his 11:17:03
 18 expert report. 11:17:07

19 So if it's all right with you, I'll go 11:17:07
 20 ahead and explore a little bit more, and then 11:17:09
 21 we'll move on, but I want to make sure that we 11:17:12
 22 touch this to the extent the expert report seems 11:17:15
 23 to paint a different picture. 11:17:19

24 MR. TYSON: That's fine. Just so the 11:17:20
 25 record is clear, I believe he testified his 11:17:23

SEAN P. TRENDE
FAIR FIGHT ACTION vs BRAD RAFFENSPERGER

April 16, 2020

52

| | | |
|----|---|----------|
| 1 | company -- | 11:17:23 |
| 2 | MR. DUBOSE: You can make your record. | 11:17:23 |
| 3 | MR. TYSON: I'm sorry? | 11:17:23 |
| 4 | MR. DUBOSE: You can make your record. Go | 11:17:25 |
| 5 | ahead, Bryan. | 11:17:25 |
| 6 | MR. TYSON: Yeah, I just wanted to make | 11:17:28 |
| 7 | the record clear that I believe he testified his | 11:17:29 |
| 8 | company is not involved in that Facebook page | 11:17:31 |
| 9 | unless I misheard that. | 11:17:34 |
| 10 | MR. DUBOSE: Yeah, he testified to that, | 11:17:36 |
| 11 | but he also testified that there has been no | 11:17:43 |
| 12 | public denial of involvement. | 11:17:47 |
| 13 | Q. (By Mr. DuBose) So that Website, | 11:17:48 |
| 14 | Conservative Country, on Facebook, the Facebook page, | 11:17:53 |
| 15 | also posted a meme stating that Pete Buttigieg and | 11:17:55 |
| 16 | Bernie Sanders should team up on the same ticket and | 11:17:59 |
| 17 | call it, quote, Butt-Bern 2020. Have you seen that | 11:18:02 |
| 18 | meme? | 11:18:08 |
| 19 | A. No. | 11:18:08 |
| 20 | Q. But you would, nevertheless, agree that | 11:18:08 |
| 21 | that is a homophobic post directed at Mr. Buttigieg; | 11:18:11 |
| 22 | would you agree with that? | 11:18:17 |
| 23 | MR. TYSON: I'll object to form. | 11:18:18 |
| 24 | THE WITNESS: It certainly would seem that | 11:18:20 |
| 25 | way. | 11:18:22 |

SEAN P. TRENDE
FAIR FIGHT ACTION vs BRAD RAFFENSPERGER

April 16, 2020

53

1 Q. (By Mr. DuBose) Are you aware of the meme
 2 that the Facebook page Conservative Country posted
 3 with a picture of Hillary Clinton in a jail where the
 4 caption read, quote: "Listen, Obama, you better
 5 pardon me. I'll expose your ties to Islam if you
 6 don't"? That seems to be pretty partisan, right?
 7

8 MR. TYSON: I'll object to form.
 9

10 THE WITNESS: That's certainly nasty.
 11

12 Q. (By Mr. DuBose) That's kind of the nasty
 13 politics that you testified about earlier, right?
 14

15 A. Oh, I think that goes beyond what I was
 16 talking about earlier.
 17

18 Q. Agreed. Are you aware of the post on
 19 Conservative Country, and this is the last one, in
 20 September of 2015 that showed a Muslim man kneeling
 21 on a prayer mat, and the caption read, quote: "Here
 22 is my new invention. I call it the Mohammed 3000, a
 23 land mine that looks like a prayer mat."
 24

25 And then it goes on to say: "Prophets" --
 26 spelled with a P-H -- "are going through the roof."
 27

28 A. Yes.
 29

30 Q. You're aware of that meme?
 31

32 A. I read it in the Daily Beast article.
 33

34 Q. And you would agree that is a horribly
 35 offensive post, right?
 36

SEAN P. TRENDE
FAIR FIGHT ACTION vs BRAD RAFFENSPERGER

April 16, 2020

54

1 A. Oh, yes.

11:19:42

2 Q. Let's talk about your opinion as it
3 relates to Dr. Graves' work in this case. Is the
4 primary thrust of your opinion that it is not
5 possible to argue that the relationship between race
6 and wait times is statistically significant; would
7 that be correct?

11:19:46

11:19:49

11:20:04

11:20:07

11:20:10

11:20:14

8 MR. TYSON: I'll object to form.

11:20:16

9 THE WITNESS: I think I would say no, that
10 the opinion is that the data don't suggest an
11 association between race and wait times.

11:20:18

11:20:29

11:20:32

12 Q. (By Mr. DuBose) And you reached that
13 conclusion based on your statistical analysis of the
14 data that was provided in Dr. Graves' report, right?

11:20:34

11:20:38

11:20:41

15 A. Correct.

11:20:45

16 MR. DUBOSE: I want to tender the response
17 of plaintiffs' expert Stephen C. Graves to the
18 expert report of Defendants' expert Sean P.
19 Trende.

11:20:55

11:20:58

11:21:02

11:21:08

11:21:09

20 (Plaintiffs' Exhibit 3 was marked for
21 identification.)

11:21:08

11:21:21

11:21:26

11:21:26

11:21:28

22 THE WITNESS: Von, since we don't have a
23 question -- and I'm sorry for using your first
24 name. I've completely forgotten your last name.

11:21:21

11:21:26

11:21:28

11:21:29

SEAN P. TRENDE
FAIR FIGHT ACTION vs BRAD RAFFENSPERGER

April 16, 2020

55

1 not a problem.

11:21:31

2 THE WITNESS: Well, I, you know...

11:21:32

3 MR. DUBOSE: We're fine. Go ahead.

11:21:33

4 THE WITNESS: If we're not going to go --I
5 know we're getting to the response. I don't
6 know how much longer you have planned with this,
7 but I could use a restroom break if we're going
8 to be going for a long time.

11:21:36

11:21:37

11:21:40

11:21:43

9 MR. DUBOSE: Sure. I mean, yeah, if you
10 want to take a restroom break. Yeah, it's going
11 to take a little time. I'm sure we'll probably
12 have some back and forth, so sure.

11:21:46

11:21:47

11:21:50

11:21:53

13 THE WITNESS: Can we go off the record for
14 ten minutes?

11:21:55

11:21:57

15 MR. DUBOSE: Fine with me.

11:22:01

16 THE WITNESS: Thank you.

11:22:03

17 (Recess from 11:22 a.m. to 11:31 a.m.)

11:22:09

18 Q. (By Mr. DuBose) So we ended kind of
19 talking about the Conservative Country Facebook page.
20 Mr. Trende, have you ever published anything on that
21 Facebook page?

11:33:14

11:33:26

11:33:30

11:33:33

22 A. No.

11:33:34

23 Q. Are you currently a Gerald Ford scholar at
24 the American Enterprise Institute?

11:33:35

11:33:46

25 A. Yes.

11:33:47

SEAN P. TRENDE
FAIR FIGHT ACTION vs BRAD RAFFENSPERGER

April 16, 2020

56

| | |
|---|--|
| <p>1 Q. And how long have you been in that 2 capacity as a scholar?</p> <p>3 A. I believe it was early 2018.</p> <p>4 Q. Is that something you have to apply for?</p> <p>5 A. No.</p> <p>6 Q. How does the selection process go?</p> <p>7 A. I was asked by Ryan Streeter if I would be 8 interested in being a visiting scholar at the 9 American Enterprise Institute, and I said yes.</p> <p>10 Q. Who is Ryan Streeter?</p> <p>11 A. He is an administrator at the American 12 Enterprise Institute.</p> <p>13 Q. And what's the general purpose of the 14 American Enterprise Institute?</p> <p>15 A. They are a think tank. I'm sure they have 16 a mission statement online that I'm sure you'd 17 appreciate I would not want to misstate in the 18 deposition.</p> <p>19 Q. Sure. Would you say they trend 20 conservative or liberal?</p> <p>21 A. So we're kind of in this new ideological 22 ecosystem that's hard -- you know, five years ago I 23 would have answered without skipping a beat that they 24 were conservative. Today I would say they are kind 25 of in the nonTrump conservative ecosystem, although,</p> | <p>11:33:49 11:33:57 11:34:06 11:34:09 11:34:11 11:34:13 11:34:16 11:34:24 11:34:28 11:34:30 11:34:33 11:34:36 11:34:37 11:34:39 11:34:41 11:34:52 11:34:57 11:34:59 11:35:04 11:35:09 11:35:14 11:35:17 11:35:20 11:35:23</p> |
|---|--|

**SEAN P. TRENDE
FAIR FIGHT ACTION vs BRAD RAFFENSPERGER**

April 16, 2020
57

1 | they do have liberal scholars on staff.

2 Q. In your capacity as a Gerald Ford scholar,
3 what do you do?

4 A. I analyze elections.

5 Q. And in any way does your role with the
6 American Enterprise Institute relate to what you do
7 at RealClearPolitics?

8 A. I mean, I don't think I would have been --
9 I don't think I would have been approached but for
0 the profile I've raised with my work, you know, RCP
1 and otherwise, but I don't run anything that I write
2 or do for them past the RealClearPolitics people.

It provides an outlet for longer think pieces. We wouldn't publish 5,000-word reports or 8,000-word reports at RealClearPolitics. So I guess there's a relationship that way.

7 Q. Let's get back to the rebuttal report that
8 Dr. Graves generated after reviewing your expert
9 report. Have you reviewed that rebuttal report?

20 A. Yes.

21 Q. Have you had a chance to review
22 Dr. Graves' deposition transcript in this case?

23 A. No.

24 Q. You understand that Dr. Graves in
25 generating his expert opinion in this case was

SEAN P. TRENDE
FAIR FIGHT ACTION vs BRAD RAFFENSPERGER

April 16, 2020

58

1 analyzing a study that had already been published; is
2 that right? 11:37:24

3 A. That's my understanding. 11:37:28

4 Q. And you understand that study to be the
5 BPC/MIT report; is that correct? 11:37:29

6 A. Yeah. 11:37:35

7 Q. And you understand that Dr. Graves, in
8 generating his expert report, was essentially
9 replicating the results of that report, correct? 11:37:37

10 A. I'm not sure exactly what Dr. Graves was
11 trying to do. It struck me as a kind of weird expert
12 report. So if you say that's what he was trying to
13 do, I don't have any reason to doubt you. 11:37:46

14 Q. Do you have any quarrel with the results
15 of the BPC/MIT report? 11:37:49

16 A. I don't have an opinion one way or the
17 other on it. 11:37:55

18 Q. Okay. You understand that Dr. Graves
19 disagrees with your analysis regarding whether there
20 is a positive relationship between wait time and the
21 percentage of African-American voters at a polling
22 station; do you understand that? 11:38:00

23 A. I don't know if he ever comes out in his
24 report and says -- makes the claim that there is a
25 positive relationship in Georgia, but... 11:38:38

SEAN P. TRENDE
FAIR FIGHT ACTION vs BRAD RAFFENSPERGER

April 16, 2020

59

1 Q. My question was as to your understanding 11:38:52
 2 that Dr. Graves disagrees with the way you structured 11:38:56
 3 your analysis on the question of whether there's a 11:38:59
 4 positive relationship between wait time and the 11:39:03
 5 percentage -- and the percent of African-American 11:39:06
 6 voters at a polling station, polling location. 11:39:10

7 MR. TYSON: I'll object to form. 11:39:13

8 THE WITNESS: Yeah, I think I answered 11:39:14
 9 that. I mean, he raises an objection to an 11:39:15
 10 analysis in conclusion -- 11:39:22

11 Q. (By Mr. DuBose) Correct. 11:39:22

12 A. -- but I don't know if he actually goes 11:39:23
 13 the next step and says this data demonstrates a 11:39:26
 14 relationship, especially since his first argument is 11:39:31
 15 that he wasn't trying, as I understood it, he wasn't 11:39:35
 16 trying to demonstrate such a relationship; he was 11:39:40
 17 just trying to tie this in somehow to the BPC report. 11:39:42

18 Q. And you said two things there. What I 11:39:46
 19 want to focus on is the first part of what you just 11:39:49
 20 relayed, which is, his disagreement with your 11:39:53
 21 analysis. Notwithstanding what his ultimate opinion 11:39:55
 22 and/or conclusion was, I want to focus your attention 11:39:59
 23 on his disagreement with the analysis, the method 11:40:02
 24 that you use to address this question. All right? 11:40:06

25 So let's start there as a premise, and I 11:40:12

SEAN P. TRENDE
FAIR FIGHT ACTION vs BRAD RAFFENSPERGER

April 16, 2020

60

1 think we can drill down on this and get some 11:40:16
 2 clarification with my next question. So in 11:40:19
 3 particular, are you aware that the primary issue 11:40:23
 4 Dr. Graves takes with your analysis is that you used 11:40:26
 5 a two-sided test when he believes a one-sided test 11:40:29
 6 should have been used? 11:40:34

7 MR. TYSON: Object to form. 11:40:37

8 THE WITNESS: Yeah, he thinks -- I would 11:40:38
 9 call it a one-tailed and a two-tailed test but 11:40:42
 10 yeah. 11:40:45

11 Q. (By Mr. DuBose) One tail and two tail 11:40:45
 12 but -- so we're talking about the same thing? 11:40:47

13 A. I think so, yeah. 11:40:50

14 Q. So how would you describe the difference 11:40:51
 15 between a one-tailed and two-tailed test in general? 11:40:53

16 A. So the two-tailed test is probably easier 11:40:58
 17 to explain, and from there you can go on to the 11:41:01
 18 one-tailed test. The two-tailed test, you can 11:41:04
 19 think -- and we'll use the t-test since that has an 11:41:09
 20 actual distribution we can talk about. 11:41:15

21 So the two-tailed test, you can imagine a 11:41:18
 22 bell curve which is the T distribution, and the 11:41:23
 23 two-tailed test asks yourself -- asks: Given the 11:41:30
 24 null hypothesis is true, no relationship between 11:41:38
 25 the -- no relationship between -- I'm just going to 11:41:43

SEAN P. TRENDE
FAIR FIGHT ACTION vs BRAD RAFFENSPERGER

April 16, 2020

61

1 shortcut it and say wait times and African-American
 2 share, what's the probability you would see this
 3 result. And it looks at the probability of a test
 4 statistic falling in the tails on either side of the
 5 bell curve.

6 The one-tailed test you can think of it as
 7 ignores the 2.5 percent chance of it ending up in
 8 either -- we'll call it the top or the right side of
 9 the distribution and then takes that 2.5 percent and
 10 expands the left side of the distribution.

11 And you can do that either way. There's a
 12 two-tailed -- there's a one-tailed upper test and a
 13 one-tailed lower test, but in lay terms it involves
 14 taking the 2.5 percent off of one tail and expanding
 15 the size of the other tail by 2.5 percent.

16 Q. So take that concept as you've just
 17 explained it and apply it to the subject matter of
 18 the expert opinions we're dealing with here, both
 19 yours and Mr. Graves'.

20 A. So is it Mr. Graves or Dr. Graves?

21 Q. I'm sorry. Dr. Graves. You're right.

22 A. No, no, no. I just don't want to demote
 23 him.

24 Q. Yeah, that's my fault.

25 A. You can do that.

SEAN P. TRENDE
FAIR FIGHT ACTION vs BRAD RAFFENSPERGER

April 16, 2020

62

1 Q. No, not intended.

2 A. So Dr. Graves, what Dr. Graves explains I
3 think summarizes it fairly that the two-tailed test
4 would ask the probability of African-American wait
5 times being greater than or less than -- I can't
6 remember if it's white or nonHispanic white wait
7 times.8 The one-tailed test you would look at the
9 probability, depending on which side of the
10 distribution you're looking at, which tail you're
11 looking at, the probability of seeing this sort of
12 data that African-American wait times are greater or
13 African-American wait times are less than.14 So it's the difference between looking at
15 them both at the same time, you know, whites greater
16 than African-Americans or whites less than
17 African-Americans, versus breaking them up into two
18 separate analyses would be the one-tailed.

19 Q. So --

20 A. And, just to be clear, I'm shortcircuiting a
21 lot in kind of a lay explanation.22 Q. Sure. Yeah, let's continue to just work
23 through this. So what you're saying is Dr. Graves
24 disagrees with the way you establish your analysis to
25 the extent your alternative hypothesis allowed for an

SEAN P. TRENDE
FAIR FIGHT ACTION vs BRAD RAFFENSPERGER

April 16, 2020

63

1 increase or decrease in wait time as the share of
 2 black registered voters increased; is that correct?
 3

4 MR. TYSON: Object to form.
 5

6 THE WITNESS: Yeah, I think that's right.
 7

8 He proposes the one-tailed test statistics, the
 9 null hypothesis being the wait time is greater
 10 than -- or is less than or equal to zero versus
 11 the alternative that it's greater than zero.
 12

13 Q. (By Mr. DuBose) Right. And under
 14

15 Dr. Graves' analysis, that one-tailed alternative
 16 hypothesis only allowed for a positive relationship
 17 as wait time increased as the share of black
 18 registered voters increased; is that correct?
 19

20 A. It would only find a significant result
 21 as -- if the relationship were positive.
 22

23 Q. Right. So it's a one-tailed test.
 24

25 A. Yeah.
 26

27 Q. Correct. And you also understand that
 28 Dr. Graves formulated his analysis that way based on
 29 anecdotal evidence from past elections that
 30 African-American voters have longer wait times than
 31 other voters; you understand that as well?
 32

33 MR. TYSON: Object to form.
 34

35 THE WITNESS: That's what I read on
 36 page 2.
 37

SEAN P. TRENDE
FAIR FIGHT ACTION vs BRAD RAFFENSPERGER

April 16, 2020

64

1 Q. (By Mr. DuBose) Correct. That's where I 11:46:01
 2 am exactly, on page 2. So for your use of the 11:46:02
 3 two-tailed test as it relates to the alternative 11:46:08
 4 hypothesis, what anecdotal evidence did you rely on 11:46:11
 5 to include that second side of your alternative 11:46:17
 6 hypothesis? 11:46:20

7 A. I did the two-tailed test because that's 11:46:23
 8 typically the test that you use. It's the default 11:46:26
 9 that almost every regression analysis and 11:46:28
 10 T-distribution uses. And so, you know, it's kind of 11:46:32
 11 the baseline unless you have good reason to do a 11:46:38
 12 one-tailed test. 11:46:41

13 Q. Right. But here Dr. Graves cites 11:46:43
 14 anecdotal evidence as the rationale for him to do 11:46:47
 15 some one-tailed tests. Do you have any anecdotal 11:46:50
 16 test as to why you -- and I'm not talking about just 11:46:54
 17 what's usually done. Do you have any anecdotal 11:46:57
 18 evidence that drove your decision to perform a 11:47:01
 19 two-tailed test as opposed to one-tailed? 11:47:03

20 A. No. I used the two-tailed test because 11:47:06
 21 that's usually what you use unless you have a very 11:47:09
 22 good reason to do a one-tailed test. 11:47:12

23 Q. Can you explain to me why if -- do you 11:47:14
 24 believe that Dr. Graves' use of the one-tailed test 11:47:18
 25 in this instance is improper? 11:47:21

SEAN P. TRENDE
FAIR FIGHT ACTION vs BRAD RAFFENSPERGER

April 16, 2020

65

| | | |
|----|---|----------|
| 1 | A. Improper? | 11:47:25 |
| 2 | Q. Yes or -- | 11:47:31 |
| 3 | A. No. I know what improper means. I wasn't | 11:47:34 |
| 4 | trying to be disagreeable there. | 11:47:39 |
| 5 | Q. Sure. | 11:47:42 |
| 6 | A. Most of these things, when you get down to | 11:47:46 |
| 7 | study design, involve judgment calls. I don't know | 11:47:48 |
| 8 | that I would utilize a one-tailed test on the basis | 11:47:55 |
| 9 | of anecdotal evidence since, to my understanding, the | 11:48:01 |
| 10 | two-tailed test is generally favored, but at the end | 11:48:05 |
| 11 | of the day, we're answering -- our one-tailed versus | 11:48:08 |
| 12 | two-tailed test answers different questions. | 11:48:12 |
| 13 | I'm answering the question of whether the | |
| 14 | data support a difference in African-American wait | |
| 15 | times. He's answering the question what is the | |
| 16 | support for difference if you exclude interest in | |
| 17 | whether white wait times are longer. | |
| 18 | Q. Right. And my question I guess put a | |
| 19 | different way then is: Are you aware of any | |
| 20 | anecdotal evidence where the wait time increased as | |
| 21 | the share of white voters increased? | |
| 22 | A. I haven't -- no, I'm not. | |
| 23 | Q. And can you explain to me why, if you do | |
| 24 | believe that this is the case, if you believe the | |
| 25 | methodology that Dr. Graves has employed here is | |

SEAN P. TRENDE
FAIR FIGHT ACTION vs BRAD RAFFENSPERGERApril 16, 2020
66

1 incorrect, can you lay out the rationale for that
2 position?

11:49:06
11:49:10

3 A. Well, the methodology to which I was
4 objecting was his initial report where he had no
5 significance tests. I believe my previous testimony
6 is that you can use a one-tailed test; it just
7 answers a different question. And you have to, you
8 know, since the two-tailed test is generally the one
9 that's employed, I think, you know, there is a burden
10 of justifying one-tailed test.

11:49:10
11:49:13
11:49:16
11:49:19
11:49:24
11:49:28
11:49:30
11:49:33

11 Q. So you believe that there was a burden
12 upon Dr. Graves to justify the one-tailed test as he
13 did in this case, right?

11:49:37
11:49:42
11:49:46

14 A. Yeah, I probably shouldn't have used the
15 word burden since that comes with legal baggage, but
16 I think you get my drift.

11:49:47
11:49:50
11:49:55

17 Q. Yeah, legal baggage aside, we won't use it
18 in that context. All right? I get what you're
19 saying. So are you saying that Dr. Graves failed to
20 carry the burden to establish why the one-sided test
21 was appropriate here?

11:49:57
11:50:01
11:50:02
11:50:06
11:50:11

22 A. No. I don't think I'm even -- I don't
23 know that I'm even saying that. I think I would
24 question using just anecdotal evidence, and I think
25 there's some circularity involved relying on the BPC

11:50:11
11:50:17
11:50:20
11:50:23

SEAN P. TRENDE
FAIR FIGHT ACTION vs BRAD RAFFENSPERGER

April 16, 2020

67

1 study to justify your test that is trying to validate
 2 the BPC study, but at the end of the day, my report
 3 was filed objecting to a report that had no
 4 significance tests in it, and that's where my opinion
 5 lies.

6 Q. And this, where you land on this, you say
 7 there's no significance, is that based on, using this
 8 one-tailed test, Dr. Graves' observation that there's
 9 a probability of .16 of observed sample results and
 10 that not reaching the, quote-unquote, gold standard
 11 of 5 percent?

12 A. I mean, yeah, I don't know -- maybe
 13 there's examples in the peer-reviewed literature
 14 where people have accepted a finding with a p-value
 15 of 0.16 or I think in one instance 0.31 or whatever,
 16 but I can't think of them off the top of my head.

17 Q. Do you recall seeing in Dr. Graves'
 18 rebuttal report, page 3, that -- and do you have it
 19 in front of you, his rebuttal report?

20 A. Yes, I printed these out.

21 Q. Okay, great. If you'll go to page 3 and
 22 it's the fourth paragraph there, it starts with:
 23 "Thus we find that there is a probability..."

24 A. Okay, I'm going to have to ask when we do
 25 page references, can we make it to the actual page

SEAN P. TRENDE
FAIR FIGHT ACTION vs BRAD RAFFENSPERGER

April 16, 2020

68

1 number in the report rather than the typewritten
 2 number at the top? Just so we're on the same page
 3 literally.

4 Q. Sure. I got you. I'm on the bottom of
 5 the page, not the page of the document at the top.
 6 So I'm at page 3 at the bottom of the piece of paper.

7 A. Yeah. I gotcha.

8 Q. Are you with me on the paragraph?

9 A. Yes, I see that.

10 Q. So here Dr. Graves -- and I may, you know,
 11 I'm not a statistician, just a regular old lawyer, so
 12 I may stumble through this a little bit but help me
 13 out. It says: "We find that there's a probability of
 14 0.16 of observing sample results," right?

15 A. Yes.

16 Q. And he goes on to state that that's not
 17 necessarily the gold standard of 5 percent being
 18 necessary to reject the null hypothesis. Do you see
 19 where I am there?

20 A. Yes.

21 Q. But he says: "But it does imply that we
 22 have an 84 percent confidence level that the true
 23 value of the slope coefficient is positive."

24 Did I read that correctly?

25 A. You did read that correctly.

SEAN P. TRENDE
FAIR FIGHT ACTION vs BRAD RAFFENSPERGER

April 16, 2020

69

1 Q. So that may not be the gold standard as to 11:53:26
 2 a confidence level that is typically expected, but I 11:53:31
 3 would say that's at least a silver or bronze; 11:53:34
 4 wouldn't you agree? 11:53:37

5 A. No. 11:53:37

6 MR. TYSON: I'll object to the form. 11:53:38

7 Q. (By Mr. DuBose) 84 percent? 11:53:42

8 A. A p-value of 0.16. 11:53:43

9 Q. Right. 11:53:49

10 A. That's not a -- go ahead. 11:53:49

11 Q. But here in the last sentence he says he 11:53:50
 12 has an 84 percent confidence level. Is your 11:53:53
 13 testimony that this 84 percent confidence level 11:53:56
 14 should just be completely disregarded? 11:54:00

15 A. Yeah, I think -- I mean, to put on my 11:54:02
 16 legal hat, it's Daubertable because it's not up to 11:54:05
 17 the standard of the profession. 11:54:08

18 Q. Right. So the standard -- 11:54:10

19 A. And I think you need to understand, when 11:54:12
 20 he says confidence level, he's not saying we're 11:54:15
 21 84 percent -- he's not saying we're 84 percent 11:54:20
 22 confident the slope is positive. You can't say that, 11:54:21
 23 and I don't think he would say that. He's talking 11:54:25
 24 about confidence in the process. 11:54:29

25 Q. Right. 11:54:31

SEAN P. TRENDE
FAIR FIGHT ACTION vs BRAD RAFFENSPERGER

April 16, 2020

70

1 A. What you do with a p-value and the only 11:54:32
 2 thing you can do with a p-value is what he says in 11:54:34
 3 the first sentence that if the null hypothesis of no 11:54:37
 4 difference were true, how probable would the results 11:54:42
 5 we see -- how probable are the results we see. 11:54:46

6 And what this p-value of 0.16 means is 11:54:49
 7 that if there's no hypothesis as we run elections 11:54:53
 8 over and over again, we would see results like this 11:54:58
 9 about one time out of six, which is less than the 11:55:02
 10 probability of having three kids who are all boys 11:55:07
 11 which I can attest to you happens and it's not 11:55:13
 12 unusual. 11:55:15

13 So we would not have a reason to reject 11:55:15
 14 the null hypothesis. And, like I said, I cannot 11:55:18
 15 think of any political science literature that 11:55:21
 16 accepts a p-value of 0.16 to reject the null 11:55:24
 17 hypothesis. 11:55:29

18 Q. And you feel like this is Daubertable, is 11:55:29
 19 what you said. 11:55:33

20 A. Yes. 11:55:33

21 Q. Any other reason for your confidence level 11:55:35
 22 as to rejection of Dr. Graves' opinion here, both on 11:55:41
 23 your statistics hat and your legal hat? 11:55:48

24 A. I haven't really thought of it any further 11:55:51
 25 on the legal hat, but on the statistics hat, I mean, 11:55:55

SEAN P. TRENDE
FAIR FIGHT ACTION vs BRAD RAFFENSPERGER

April 16, 2020

71

1 I guess there's two prongs of the statistics hat,
 2 just as long as we're building a record.

3 The first prong is that -- I guess it's
 4 more the political science hat that I'm -- it may
 5 exist, but I'm not aware of null hypotheses being
 6 rejected with p-value of 0.16 is not what would be
 7 considered reasonable scientific certainty within the
 8 discipline.

9 The second objection is you have to be
 10 very -- he worded that last sentence in a very
 11 specific way, and you cannot take it to mean an
 12 84 percent chance that the slope is positive.

13 Q. Okay. Anything else?

14 A. As I sit here, that's it.

15 Q. So we've kind of touched on a couple of
 16 discrete parts of this rebuttal report. As you --
 17 and you just reviewed this report prior to us getting
 18 together today, right?

19 A. Yes.

20 Q. Are there any other pieces of this report
 21 that you I guess take issue with?

22 MR. TYSON: Object to form.

23 THE WITNESS: I mean, we can walk through
 24 it, and there might be little things. Certainly
 25 to the extent that this analysis is repeated for

SEAN P. TRENDE
FAIR FIGHT ACTION vs BRAD RAFFENSPERGER

April 16, 2020

72

1 the other various proposed tests, I would object
2 to them on the same -- in the same way.

3 Q. (By Mr. DuBose) Okay. Anything else?

4 A. As I sit here, you know, no. My only
5 opinion in the first report was that the data don't
6 support the conclusion that at least seemed to be
7 suggested, and nothing in this report changes my mind
8 about that.

9 Q. Anything else you want to add to the
10 record about taking issue with the rebuttal report
11 that we have not covered?

12 MR. TYSON: Object to form.

17 At the bottom of numbered page 4 we can
18 see kind of a similar analysis repeated, and I
19 would object to those analyses for the same
20 reason.

21 Q. (By Mr. DuBose) Okay. A couple follow-up
22 questions from some things we touched on earlier.
23 Are you an active member of any bar?

24 A. I believe I'm an active member of D.C. and
25 an inactive member of Texas; I pay dues in both

SEAN P. TRENDE
FAIR FIGHT ACTION vs BRAD RAFFENSPERGER

April 16, 2020

73

| | | |
|----|--|----------|
| 1 | those. | 11:59:15 |
| 2 | Q. Have you taken any other bars? | 11:59:16 |
| 3 | A. I took Virginia. | 11:59:18 |
| 4 | Q. Are you inactive there? | 11:59:21 |
| 5 | A. I don't believe I'm even on the rolls | 11:59:23 |
| 6 | anymore. | 11:59:26 |
| 7 | Q. Did you pass the Virginia bar? | 11:59:27 |
| 8 | A. Oh, yeah. Yeah. | 11:59:29 |
| 9 | Q. You just let your membership go? | 11:59:31 |
| 10 | A. They're expensive to keep up. | 11:59:34 |
| 11 | Q. Did you take any other bar exams? | 11:59:38 |
| 12 | A. Well, just to be precise, I only took | 11:59:40 |
| 13 | Texas and Virginia, and then I waived into D.C. | 11:59:46 |
| 14 | Q. Okay. | 11:59:50 |
| 15 | A. And I passed (inaudible.) | 11:59:55 |
| 16 | Q. I'm sorry. What did you say? | 11:59:56 |
| 17 | A. And I passed both the first time. | 11:59:58 |
| 18 | Q. Okay. Turning back to your earlier | 12:00:00 |
| 19 | response about working as a consulting expert and a | 12:00:04 |
| 20 | testifying expert in this case, can you tell me when | 12:00:07 |
| 21 | you began working as a consulting expert? | 12:00:10 |
| 22 | A. Honestly, no. | 12:00:15 |
| 23 | Q. Did you submit a separate bill for the | 12:00:17 |
| 24 | work you did as a consulting expert? | 12:00:21 |
| 25 | A. No. You have all my bills. | 12:00:23 |

SEAN P. TRENDE
FAIR FIGHT ACTION vs BRAD RAFFENSPERGER

April 16, 2020

74

1 Q. So it's one bill for consulting and trial
 2 work or testifying work? 12:00:26

3 A. Yes. 12:00:30

4 Q. Can you tell me how much you were paid for
 5 or how much you billed as a consulting expert? 12:00:33

6 A. No. 12:00:40

7 Q. What was the scope of your work during
 8 your time as a consulting expert? 12:00:43

9 MR. TYSON: And I would object on the
 10 basis that we don't have to disclose -- he was a
 11 consulting expert; we don't have to disclose
 12 what work he was doing while he was a consulting
 13 expert for us. 12:00:54

14 Q. (By Mr. DuBose) Outside of what you were
 15 provided with respect to facts and data for your
 16 testifying expert role, were you supplied any other
 17 facts and data for your consulting expert opinions? 12:00:56

18 MR. TYSON: And, again, I'll just object,
 19 I don't think that's discoverable. He was
 20 retained as a consulting expert for us so I
 21 don't know on what basis you'd have access to
 22 what we provided to him or what analysis he did
 23 for us in a nontestifying capacity. 12:00:58

24 Q. (By Mr. DuBose) Was there a connection
 25 between the consulting expert and testifying expert 12:01:00

SEAN P. TRENDE
FAIR FIGHT ACTION vs BRAD RAFFENSPERGER

April 16, 2020

75

| | | |
|----|---|----------|
| 1 | work? | 12:01:38 |
| 2 | MR. TYSON: And, again, same objection. | 12:01:41 |
| 3 | MR. DUBOSE: Okay. We may be done. Give | 12:01:51 |
| 4 | me a minute and I'll come back. All right? | 12:01:54 |
| 5 | THE WITNESS: All right. | 12:02:01 |
| 6 | (Recess from 12:02 p.m. to 12:04 p.m.) | 12:02:07 |
| 7 | Q. (By Mr. DuBose) Mr. Trende, you there? | 12:04:48 |
| 8 | A. I am. | 12:04:50 |
| 9 | MR. DUBOSE: Just one little housekeeping | 12:04:53 |
| 10 | thing. Bryan, you objected on the questions | 12:04:55 |
| 11 | with respect to his role as a consulting expert. | 12:04:59 |
| 12 | Just to be clear, were you instructing him not | 12:05:03 |
| 13 | to answer those questions? | 12:05:06 |
| 14 | MR. TYSON: Yes, I was because that's not | 12:05:10 |
| 15 | discoverable information under the Federal | 12:05:12 |
| 16 | Rules, yes. | 12:05:14 |
| 17 | Q. (By Mr. DuBose) And, Mr. Trende, you're | 12:05:15 |
| 18 | going to follow Mr. Tyson's direction; is that | 12:05:16 |
| 19 | correct? | 12:05:19 |
| 20 | A. Yes. | 12:05:19 |
| 21 | MR. DUBOSE: That's all I've got. | 12:05:22 |
| 22 | MR. TYSON: I don't have anything to add, | 12:05:24 |
| 23 | so that will be it for the day. Thank you. | 12:05:24 |
| 24 | THE REPORTER: Gentlemen, don't leave me | 12:05:24 |
| 25 | yet. Okay? | 12:05:24 |

SEAN P. TRENDE
FAIR FIGHT ACTION vs BRAD RAFFENSPERGER

April 16, 2020

76

| | | |
|----|--|----------|
| 1 | (Discussion ensued off the record.) | 12:05:49 |
| 2 | MR. TYSON: Mr. Trende, do you want to | 12:05:49 |
| 3 | read and sign? | 12:05:51 |
| 4 | THE WITNESS: Honestly, am I able to just | 12:06:02 |
| 5 | read it and send you an image of my signature, | 12:06:10 |
| 6 | or do I need to get it, like, notarized? | 12:06:14 |
| 7 | MS. BRYAN: Bryan, what we agreed to in | 12:06:25 |
| 8 | the declarant depositions is just to let the | 12:06:27 |
| 9 | witness handwrite on the errata sheet: "I | 12:06:31 |
| 10 | hereby declare under penalty of perjury pursuant | 12:06:34 |
| 11 | to 28 U.S.C. 17 46 that the foregoing is true | 12:06:38 |
| 12 | and correct" so that they don't need to get a | 12:06:40 |
| 13 | notary. | 12:06:43 |
| 14 | MR. TYSON: That's fine with me if we want | 12:06:44 |
| 15 | to use that process here as well. | 12:06:46 |
| 16 | THE WITNESS: I never really find much, | 12:06:51 |
| 17 | but I'll read and sign. | 12:06:52 |
| 18 | MS. BRYAN: I think we had asked for a | 12:07:25 |
| 19 | draft but no rush delivery. | 12:07:28 |
| 20 | MR. TYSON: We just would need electronic | 12:07:32 |
| 21 | only and no rough draft for us. | 12:07:35 |
| 22 | (Whereupon, the deposition was concluded | 12:08:01 |
| 23 | at 12:08 p.m.) | |
| 24 | (Pursuant to Rule 30(e) of the Federal | |
| 25 | Rules of Civil Procedure and/or O.C.G.A. 9-11-30(e), | |

SEAN P. TRENDE
FAIR FIGHT ACTION vs BRAD RAFFENSPERGER

April 16, 2020

77

1 signature of the witness has been reserved.)
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SEAN P. TRENDE
FAIR FIGHT ACTION vs BRAD RAFFENSPERGER

April 16, 2020

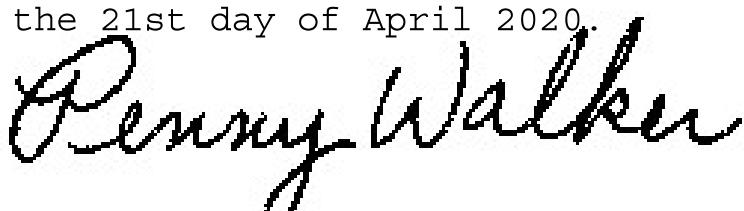
78

1 C E R T I F I C A T E
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5

STATE OF GEORGIA:

COUNTY OF FULTON:

I hereby certify that the foregoing transcript was taken down, as stated in the caption, and the questions and answers thereto were reduced to typewriting under my direction; that the foregoing pages 1 through 77 represent a true, complete, and correct transcript of the evidence given upon said hearing, and I further certify that I am not of kin or counsel to the parties in the case; am not in the regular employ of counsel for any of said parties; nor am I in anywise interested in the result of said case.

18 This, the 21st day of April 2020.
19
20
21
22
23
24
25PENNY MC~~PH~~HERSON WALKER, CCR-B-914

SEAN P. TRENDE
FAIR FIGHT ACTION vs BRAD RAFFENSPERGER

April 16, 2020
79

1
2 COURT REPORTER DISCLOSURE
3

4 Pursuant to Article 10.B. of the Rules and
5 Regulations of the Board of Court Reporting of the
6 Judicial Council of Georgia which states: "Each court
7 reporter shall tender a disclosure form at the time
8 of the taking of the deposition stating the
9 arrangements made for the reporting services of the
certified court reporter, by the certified court
reporter, the court reporter's employer, or the
referral source for the deposition, with any party to
the litigation, counsel to the parties or other
entity. Such form shall be attached to the
deposition transcript," I make the following
disclosure:

10 I am a Georgia Certified Court Reporter. I am
11 here as a representative of Esquire Deposition
12 Solutions. Esquire Deposition Solutions was
13 contacted to provide court reporting services for the
deposition. Esquire Deposition Solutions will not be
14 taking this deposition under any contract that is
prohibited by O.C.G.A. 9-11-28 (c).

15 Esquire Deposition Solutions has no
16 contract/agreement to provide reporting services with
any party to the case, any counsel in the case, or
any reporter or reporting agency from whom a referral
17 might have been made to cover this deposition.
Esquire Deposition Solutions will charge its usual
18 and customary rates to all parties in the case, and a
financial discount will not be given to any party to
this litigation.

19
20
21 PENNY MCPHERSON WALKER, CCR-B-914
22
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SEAN P. TRENDE
FAIR FIGHT ACTION vs BRAD RAFFENSPERGER

April 16, 2020

80

1 DEPOSITION ERRATA SHEET

2

3 Our Assignment No. 5481621

4 Case Caption: Fair Fight Action, et al vs. Brad
5 Raffensperger, et al

6

7 DECLARATION UNDER PENALTY OF PERJURY

8

9 I declare under penalty of perjury that I have
10 read the entire transcript of my deposition taken in
11 the above-captioned matter or the same has been read
12 to me and the same is true and accurate, save and
13 except for changes and/or corrections, if any, as
14 indicated by me on the DEPOSITION ERRATA SHEET
15 hereof, with the understanding that I offer these
16 changes as if still under oath. Signed on the _____
17 day of _____, 20____.

18

19 _____

20 SEAN P. TRENDE

SEAN P. TRENDE
FAIR FIGHT ACTION vs BRAD RAFFENSPERGER

April 16, 2020

81

1 DEPOSITION ERRATA SHEET

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3 _____

4 Reason for change: _____

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6 _____

7 Reason for change: _____

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10 Reason for change: _____

11 Page No. _____ Line No. _____ Change to: _____

12 _____

13 Reason for change: _____

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16 Reason for change: _____

17 Page No. _____ Line No. _____ Change to: _____

18 _____

19 Reason for change: _____

20 Page No. _____ Line No. _____ Change to: _____

21 _____

22 Reason for change: _____

23 _____

24 SIGNATURE: _____ DATE: _____

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SEAN P. TRENDE
FAIR FIGHT ACTION vs BRAD RAFFENSPERGER

April 16, 2020

82

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4 Reason for change: _____

5 Page No. _____ Line No. _____ Change to: _____

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17 Page No. _____ Line No. _____ Change to: _____

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19 Reason for change: _____

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22 Reason for change: _____

23 _____

24 SIGNATURE: _____ DATE: _____

25 SEAN P. TRENDE

SEAN P. TRENDE
FAIR FIGHT ACTION vs BRAD RAFFENSPERGER

April 16, 2020

83

1 My name is Penny McPherson Walker. I am a
2 Georgia certified shorthand reporter. This
3 deposition is being held via videoconferencing
4 equipment. The witness and the reporter are not in
5 the same room. The witness will be sworn in remotely
6 pursuant to agreement of all parties. The parties
7 stipulate that the testimony is being given as if the
8 witness was sworn in person.

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SEAN P. TRENDE April 16, 2020
 FAIR FIGHT ACTION vs BRAD RAFFENSPERGER Index: \$500..African-american

| | | | | |
|--------------------|--------------|-------------|-------------------|----------------------|
| | 11:31 | 45:14, 17, | 5,000-word | accepts |
| Exhibits | 55:17 | 20 46:2, 9 | 57:14 | 70:16 |
| | 12:02 | 47:4 56:3 | | access |
| 5481621 Sea | 75:6 | 2019 | 7 | 74:21 |
| n.P.Tende. | 12:04 | 7:21 | | accreditation |
| EXHIBIT2 | 75:6 | 10:17 | 70 | on |
| 3:10 | | | | 23:15 |
| 48:15 | 16 | 2020 | 44:18 | |
| | 67:9 | 52:17 | 75 | accurately |
| \$ | 16th | 26th | 44:18 | 5:9 |
| | 50:15 | 50:14 | | active |
| \$500 | 17 | 28 | 8 | 25:3 |
| 45:11 | 76:11 | 76:11 | | 72:23, 24 |
| | 1900s | | | actively |
| - | 19:11 | 3 | 57:15 | 45:9 |
| | | | 84 | actual |
| --I | 2 | 3 | 68:22 | 31:8 |
| 55:4 | | 54:20 | 69:7, 12, | 60:20 |
| | | 67:18, 21 | 13, 21 | 67:25 |
| | 2 | 68:6 | 71:12 | add |
| 0 | 48:15 | 72:16 | | 72:9 |
| | 63:25 | | | |
| | 64:2 | 300 | A | 75:22 |
| 0.16 | | 13:6 | | additional |
| 67:15 | 2.5 | 3000 | a.m. | 7:14 |
| 68:14 | 61:7, 9, | 53:17 | 55:17 | 12:18 |
| 69:8 | 14, 15 | | | |
| 70:6, 16 | 20 | | ability | address |
| 71:6 | 48:25 | 4 | 5:9 | 59:24 |
| 0.31 | 2009 | | | |
| 67:15 | 42:13 | 4 | academic | administrat |
| | | 72:17 | 19:23 | or |
| | 2011 | | 20:21, 23 | 56:11 |
| 1 | 26:16 | 4.9 | 21:6, 10, | admitted |
| | | 46:21 | 13 23:5, | 27:25 |
| | | | 7, 12 | 28:1, 3, 4 |
| 1 | 2014 | 46 | | |
| 6:13, 16, | 45:5 | 76:11 | accept | 29:25 |
| 17 7:10 | 2015 | | 16:2 | 30:2, 4 |
| 35:14 | 53:15 | | 21:25 | |
| 11 | 2017 | 5 | 34:5 | African- |
| 48:4, 18 | 15:24 | | | american |
| | 16:16 | | | |
| 11:22 | 32:20 | 46:20 | acceptable | 58:21 |
| 55:17 | | 67:11 | 6:7 | 59:5 61:1 |
| | | 68:17 | | |
| | 2018 | | accepted | 62:4, 12, |
| | 44:21 | | 67:14 | 13 63:21 |
| | | | | 65:14 |

SEAN P. TRENDE April 16, 2020
 FAIR FIGHT ACTION vs BRAD RAFFENSPERGER Index: African-americans..back

| | | | | |
|--------------------------|------------------|--------------------|-----------------------|------------------------|
| African-americans | 48:7 | 66:24 | argue | attach |
| | 55:24 | | 28:5 | 6:9,15 |
| 62:16,17 | 56:9,11, | answering | 29:24 | attaching |
| | 14 57:6 | 65:11,13, | 54:5 | |
| age | | 15 | | 6:21 |
| 25:5,6 | amount | answers | argument | attempt |
| | 10:10 | 65:12 | 59:14 | 35:8 |
| agenda | 11:1 | 66:7 | art | attention |
| 25:10,12 | 24:24 | | 43:23 | |
| agree | 29:8 | anymore | 44:2 | 59:22 |
| 25:23 | | 22:20 | | |
| 26:2 36:1 | analyses | 73:6 | article | attest |
| 52:20,22 | 62:18 | | 46:3 | 70:11 |
| 53:24 | 72:19 | appeared | 53:23 | attorney |
| 69:4 | | 49:1 | | 5:18 6:1 |
| agreed | 34:1 35:3 | Appendix | article-length | 8:22 9:5, |
| 53:13 | 43:7 | 38:25 | 45:24 | 7,10 |
| 76:7 | 44:5,9,20 | applied | | 14:12 |
| | 45:14,19 | 16:20 | asks | |
| agreed-upon | 54:13 | 33:1,6 | 60:23 | attorney-client |
| 24:13 | 58:19 | | | |
| agreement | 59:3,10, | apply | assist | 5:20 6:2 |
| 12:6 | 21,23 | 56:4 | 37:7 | |
| 27:22 | 60:4 | 61:17 | assisted | 35:8 |
| ahead | 62:24 | approach | 37:11 | |
| 17:13 | 63:10,19 | 32:2 | associate | 21:18 |
| 38:2 | 64:9 | | 23:18 | |
| 48:10,12 | 71:25 | approached | association | automatic |
| 51:20 | 72:18 | 57:9 | 23:24 | 50:17 |
| 52:5 55:3 | 74:22 | approaches | 24:17,22 | average |
| 69:10 | | 24:15 | 54:11 | 43:24 |
| allowed | analyst | 31:5 | | 44:6 |
| 62:25 | 43:10,12 | | association | averages |
| 63:11 | analyze | approximate | s | 46:18 |
| | 44:10 | ly | 24:5 | |
| | 46:12 | 15:24 | assume | avoid |
| Almanac | 57:4 | April | 5:5 17:14 | 32:3 |
| 48:7 | analyzing | 15:24 | assuming | aware |
| alternative | 58:1 | APSA | 18:14 | 50:9 |
| 62:25 | and/or | 23:21,23 | 19:23 | 53:1,13, |
| 63:8,10 | 59:22 | 24:17,19 | 34:6 | 22 60:3 |
| 64:3,5 | | archiving | 36:14 | 65:19 |
| American | anecdotal | 47:9,10 | 45:23 | 71:5 |
| 18:20,24 | 63:20 | | | |
| 23:24 | 64:4,14, | area | assumptions | B |
| 31:8 32:4 | 15,17 | 43:23 | 14:12,15 | |
| 34:16 | 65:9,20 | | | |
| | | | | back |

SEAN P. TRENDE April 16, 2020
 FAIR FIGHT ACTION vs BRAD RAFFENSPERGER Index: background..case

| | | | | |
|--------------------|-----------------|-----------------|-------------------|-----------------------|
| 55:12 | began | book | build | capacities |
| 57:17 | 73:21 | 20:6 | 30:14 | 39:25 |
| 73:18 | begin | bottom | building | capacity |
| 75:4 | 13:8 | 68:4,6 | 71:2 | 56:2 57:2 |
| background | behalf | 72:17 | burden | 74:23 |
| 33:17 | 10:2 | boys | 33:21 | caption |
| backgrounds | believes | 70:10 | 66:9,11, 15,20 | 50:18 53:4,16 |
| 41:15 | 60:5 | BPC | | |
| baggage | bell | 59:17 | butcher | career |
| 66:15,17 | 60:22 | 66:25 | 22:16 | 19:17 |
| ball | 61:5 | 67:2 | Butt-bern | 20:21,23 |
| 41:3,17 | belong | BPC/MIT | 52:17 | Carolina |
| 44:2 | 23:18 | 58:5,15 | Buttigieg | 15:21 |
| ballot | 24:16,19, | break | 52:15,21 | 21:21 |
| 19:11 | 22 | 5:11,14 | | 26:12 |
| bar | Bernie | 55:7,10 | C | 27:3 |
| 72:23 | 52:16 | breaking | | 28:13 |
| 73:7,11 | Beto | 62:17 | call | 36:12 |
| bars | 50:18,22 | briefly | 13:10 | 66:20 |
| 73:2 | big | 39:13 | 21:23 | case |
| base | 41:4,7 | bring | 22:5 41:4 | 4:14 7:18 |
| 49:10 | bill | 6:22 | 52:17 | 8:10,15 |
| based | 73:23 | 27:23 | 53:17 | 9:8,17,23 |
| 35:24 | 74:1 | broader | 54:25 | 10:3,6, 11,17 |
| 50:25 | billed | 32:2 | 60:9 61:8 | 11:2,11 |
| 54:13 | 74:5 | broadly | called | 12:25 |
| 63:19 | billing | 19:21 | 49:5 | 13:5,8,23 |
| 67:7 | 7:11 | bronze | calls | 14:1 |
| baseline | bills | 69:3 | 65:7 | 15:23 |
| 64:11 | 73:25 | brought | campaign | 17:1 |
| basis | bit | 27:24,25 | 45:10 | 21:22 |
| 65:8 | 15:3,14 | 28:22 | campaigns | 26:12,16, |
| 74:10,21 | 20:11 | 29:2 31:6 | 44:24 | 21,25 |
| battle | 51:20 | Bryan | 45:2 | 27:13,15, |
| 13:13 | 68:12 | 6:5 7:4 | candidate | 21,23,24 |
| Beast | black | 31:21 | 28:6,8 | |
| 50:3,11 | 63:2,12 | 40:21 | candidates | 29:11 |
| 53:23 | bodies | 52:5 | 47:3 | 30:9 |
| beat | 27:3 | 75:10 | Canon | 31:3,19, 25 32:10, |
| 56:23 | | 76:7,18 | 33:21 | 16,21,25 33:14,23 |

SEAN P. TRENDE April 16, 2020
 FAIR FIGHT ACTION vs BRAD RAFFENSPERGER Index: cases..consistent

| | | | | |
|--------------------|--------------------|--------------------|--------------------|--------------------|
| 34:8,9,12 | chapters | 62:20 | 10,14 | confidence |
| 35:10,20 | 20:6 | 75:12 | 52:1,8 | 68:22 |
| 36:4,23 | characteris | Cleveland | compensatio | 69:2,12, |
| 37:8 | tics | 16:11 | n | 13,20,24 |
| 38:4,9 | 24:11 | climate | 9:22 | 70:21 |
| 39:18,19 | characteriz | 25:24 | 12:11 | confident |
| 40:19 | ation | 26:3 | competitive | 69:22 |
| 41:13,19 | 47:2 | Clinton | 46:24 | conflict |
| 54:3 | characteriz | 53:3 | competitive | 45:9 |
| 57:22,25 | e | close | ness | confusion |
| 65:24 | 43:5 | 15:15 | 43:13 | 22:20 |
| 66:13 | characteriz | 47:20 | 45:25 | |
| 73:20 | es | 48:1,3 | 46:9,14 | congression |
| cases | 50:5 | closed | complete | 34:1 |
| 15:10,17 | circle | 50:17 | 6:20 | connection |
| 26:10 | 12:18 | closet | completed | 18:1 |
| 27:1,4,5 | circularity | 30:7 | 16:17 | 74:24 |
| 28:14 | 66:25 | coefficient | completely | conservativ |
| 29:7,11 | citations | 68:23 | 30:11 | e |
| 30:2,3,8, | 39:8 | cofounder | 54:24 | 48:22 |
| 16,21 | cited | 47:19,20 | 69:14 | 49:5,14, |
| 31:1,2,24 | 39:3 | committed | completion | 19,23 |
| 32:7,18 | 48:5,20 | 17:20 | 17:17 | 50:6 |
| 41:6,21 | cites | 47:1 | computer | 52:14 |
| caveat | 64:13 | committee | 37:17 | 53:2,14 |
| 39:15 | claim | 17:20 | concede | 55:19 |
| CEO | 58:24 | Common | 36:5 | 56:20,24, |
| 47:17 | clarificati | 15:18 | concept | 25 |
| certainty | on | 21:22 | 61:16 | considerabl |
| 71:7 | 60:2 | 26:12 | conclusion | y |
| challenge | class | 32:13,15 | 54:13 | 25:4 |
| 35:12 | 18:15 | 33:24 | 59:10,22 | considerati |
| challenges | classes | communicati | 72:6 | on |
| 27:2 | 18:19 | ons | conclusions | 31:10 |
| challenging | 19:4 | 8:13 | 36:21 | considered |
| 23:10 | 33:20 | 13:20 | 71:7 | 13:22 |
| chance | clear | 14:11 | conduct | 71:7 |
| 57:21 | 5:2 36:5 | company | 16:23 | consist |
| 61:7 | 51:13,25 | 11:16 | 43:20 | 46:15 |
| 71:12 | 52:7 | 42:24 | 44:20 | consistent |
| change | | 51:7,9, | 45:19 | 36:12 |
| 42:6 | | | | |

SEAN P. TRENDE April 16, 2020
 FAIR FIGHT ACTION vs BRAD RAFFENSPERGER Index: consulting..Democratic

| | | | | |
|----------------------|------------------|-------------------|--------------------|--------------------|
| consulting | 11:23, 25 | 19:10 | 72:24 | 76:8 |
| 39:20, 25 | correct | 28:13, 23 | 73:13 | declare |
| 40:3 | 11:6, 21 | 29:1, 4 | Daily | 76:10 |
| 44:23 | 15:6, 10, | 36:10, 13, | 50:3, 11 | decline |
| 45:2, 9 | 11, 22 | 19, 22 | 53:23 | 41:7 45:7 |
| 73:19, 21, | 16:17, 19, | cover | data | declined |
| 24 74:1, | 21 22:4 | 7:7, 13 | 13:21, 24 | 41:1 42:7 |
| 5, 8, 11, | 27:7 | 45:8 | 41:10 | 45:6 |
| 12, 17, 20, | 38:21 | covered | 47:9 | decrease |
| 25 75:11 | 42:23 | 26:11 | 54:10, 14 | 63:1 |
| contacted | 43:14 | 72:11 | 59:13 | deeper |
| 7:17 8:2, | 47:13 | Covington | 62:12 | 46:21 |
| 9, 14, 17, | 50:1, 13 | 26:21, 25 | 65:14 | default |
| 25 10:16 | 54:7, 15 | 27:2, 15, | 72:5 | 64:8 |
| contained | 58:5, 9 | 21 28:14, | 74:15, 17 | defendants |
| 34:15 | 59:11 | 18, 20 | dataset | 12:2 |
| 38:11 | 63:2, 13, | create | 39:1 | 13:20 |
| | 18 64:1 | 8:22, 24 | date | 14:11 |
| content | 75:19 | 9:4, 12 | 17:17 | |
| 21:8 | 76:12 | 10:14 | dated | defendants' |
| 42:22 | | 47:11 | 10:21 | 14:12 |
| 43:3, 5 | correctly | creating | 15:23 | 54:18 |
| 46:4, 8, 14 | 22:23 | 9:1, 2, 3, | Daubertable | defended |
| 47:11 | 33:8, 9 | 18 | 69:16 | 17:8 |
| 50:5 | 68:24, 25 | current | 70:18 | defending |
| 51:16 | | 26:8 | day | 27:6, 10 |
| context | counsel | curriculum | 10:10 | defense |
| 66:18 | 5:16 | 23:12 | 31:11 | 13:21 |
| continue | 13:20, 21 | curve | 50:2 | 14:4, 15 |
| 62:22 | 14:4, 8, | 60:22 | 65:11 | degree |
| | 11, 15, 20, | 61:5 | 67:2 | 16:4, 18, |
| | 22, 23 | cutoff | 75:23 | 22 23:5, 7 |
| conversation | country | 46:19 | days | degrees |
| 14:20 | 43:14 | 46:19 | 10:13 | 21:4, 14 |
| | 49:5, 14, | cuts | dealing | delay |
| conversations | 20, 23 | 51:16 | 61:18 | 17:19 |
| 41:14 | 50:6 | CV | decision | delivery |
| 46:24 | 52:14 | 16:25 | 64:18 | 76:19 |
| 49:12 | 53:2, 14 | <hr/> | decisions | Democratic |
| copy | 55:19 | D | 36:25 | 50:22 |
| 47:14 | couple | <hr/> | declarant | |
| | 6:25 | <hr/> | | |
| | 71:15 | | | |
| core | 72:21 | | | |
| 20:19 | | | | |
| corporate | court | D.C. | | |
| | 4:19, 25 | | | |

SEAN P. TRENDE April 16, 2020
 FAIR FIGHT ACTION vs BRAD RAFFENSPERGER Index: demonstrate..dues

| | | | | |
|--------------------|-------------------------|-------------------------|------------------|----------------|
| demonstrate | 20:2 | 71:8 | Dixon | 27:7,11 |
| 59:16 | 21:16 | disclosable | 26:13,24 | drift |
| demonstrate | detail | 39:17 | 27:1,21, | 66:16 |
| s | 10:1 | disclose | 23,24,25 | drill |
| 59:13 | details | 40:3 | 28:6,8, | 60:1 |
| demote | 11:1 48:4 | 74:10,11 | 14,16 | dropped |
| 61:22 | determine | disclosed | 29:3 | 50:3 |
| denial | 21:12 | 39:24 | 32:12 | docket |
| 52:12 | developed | 40:3,4, | 40:5,11 | drove |
| denials | 20:12 | 11,14 | doctoral | Dubose |
| 49:13,17 | developing | discoverabl e | 16:7,25 | 4:12,14, |
| denied | 20:18 | 74:19 | document | 15,18 |
| 35:14 | 21:19 | 75:15 | 68:5 | 6:5,9,15, |
| department | 38:9 | discovery | documents | 17 7:4,12 |
| 19:6 | device | 13:13 | 12:13,16, | 12:13,16, |
| depending | 15:13 | discrete | 22,23 | 22,23 |
| 62:9 | difference | 71:16 | 8:23,25 | 15:7,9, |
| depends | 60:14 | discussing | 9:14,21 | 12,15,17 |
| 29:23 | 62:14 | 72:16 | 10:15 | 29:18 |
| deposed | 65:14,16 | discussion | 13:19 | 30:14 |
| 4:22 | 70:4 | 6:12 76:1 | 14:4,10 | 34:23 |
| 28:16 | direct | disregarded | 39:2 | 36:23 |
| deposition | 38:15 | 69:14 | door | 37:7 |
| 4:15 | directed | dissertatio n | 50:17 | 39:18,24 |
| 6:10,18, | 52:21 | 17:15 | doubt | 40:6,15, |
| 21 14:19 | direction | 19:7,8,15 | 58:13 | 17,21,24 |
| 15:1 | 75:18 | distributio n | downside | 48:12,19 |
| 56:18 | directly | 60:20,22 | 50:9,13 | 50:9,13 |
| 57:22 | 51:17 | 61:9,10 | 51:7,10 | 51:7,10 |
| depositions | disagreeabl e | 62:10 | downturn | 52:2,4, |
| 76:8 | 65:4 | District | 25:20 | 10,13 |
| describe | disagreemen t | 15:20 | draft | 53:1,9 |
| 46:14 | 59:20,23 | districts | 37:16,21, | 54:12,16, |
| 60:14 | disagrees | 29:14,15, | 24 38:1 | 25 55:3, |
| deserved | 58:19 | 16 | 76:19,21 | 9,15,18 |
| 26:6 | 59:2 | dive | drafting | 59:11 |
| design | 62:24 | 46:21 | 37:8 | 60:11 |
| 65:7 | discipline | drawn | drafts | 63:9 64:1 |
| designed | 19:18 | | 37:12,19 | 69:7 |
| | | | drawing | 72:3,21 |
| | | | | 74:14,24 |
| | | | | 75:3,7,9, |
| | | | | 17,21 |
| | | | dues | |

SEAN P. TRENDE April 16, 2020
 FAIR FIGHT ACTION vs BRAD RAFFENSPERGER Index: duties..explore

| | | | | |
|-------------------------|-------------------|--------------------|--------------------|-----------|
| 72:25 | elections | 55:24 | exclude | 7:18 8:9, |
| duties | 22:22 | 56:9,12, | 28:15,21 | 15 9:9,16 |
| 40:24 | 23:3,4, | 14 57:6 | 35:9 | 10:17 |
| | 15,21 | | 65:16 | 11:17,24 |
| | 24:7,8,11 | entity | | 13:1 |
| E | 31:9 32:5 | 11:23,25 | exclusively | 14:7,13, |
| | 33:25 | entry | 42:18 | 16 16:3, |
| e-mail | 34:1 | 11:3 | execute | 16 26:25 |
| 7:8,13 | 43:8,9,12 | equal | 11:10 | 29:7 |
| 8:4 | 45:8 57:4 | 63:7 | executed | 30:2,7 |
| earlier | 63:20 | | 19:18 | 33:25 |
| 53:10,12 | 70:7 | errata | 20:2 | 35:1,9 |
| 72:22 | electoral | 76:9 | 21:17 | 38:16 |
| 73:18 | 34:1 | essentially | | 39:14,20, |
| early | electronic | 58:8 | exercises | 21 40:1, |
| 19:11 | 76:20 | establish | 21:3 | 3,4,25 |
| 33:21 | employed | 62:24 | exhibit | 48:13,19 |
| 56:3 | 42:13,15 | 66:20 | 6:10,13, | 51:11,18, |
| easier | 65:25 | estimation | 16,17,21 | 22 54:17, |
| 60:16 | 66:9 | 23:2 | 48:11,15 | 18 57:18, |
| ecosphere | end | evaluate | 54:20 | 25 58:8, |
| 56:25 | 10:9 | 43:18 | | 11 61:18 |
| ecosystem | 31:10 | event | exhibits | 73:19,20, |
| 56:22 | 65:10 | 25:9,13 | 14:21 | 21,24 |
| editor | 67:2 | evidence | exist | 74:5,8, |
| 47:14 | ended | 28:3,4,23 | 71:5 | 11,13,16, |
| | 21:8 | 29:4 | expanding | 17,20,25 |
| edits | 28:23 | 63:20 | 61:14 | 75:11 |
| 37:15,23 | 29:4 | event | experts | |
| 38:1 | 55:18 | 64:4,14, | 9:6 | |
| effect | ending | 18 65:9, | exist | |
| 8:13 | 61:7 | 20 66:24 | 7:1 | |
| 19:12 | engagement | evidentiary | expect | 30:18,25 |
| 37:5 | 8:18 | 28:12 | 17:1 | 31:23 |
| 46:11 | 11:10 | exact | expanding | |
| elect | 12:1,9,24 | 18:8 | 61:14 | |
| 27:9 | 13:2 40:7 | EXAMINATION | experts | |
| | | 4:11 | 61:10 | |
| election | enjoy | examples | experience | |
| 33:20 | 48:1 | 67:13 | 61:17 | |
| election-related | ensued | exams | explains | |
| 30:3 | 6:12 76:1 | 73:11 | 62:2 | |
| | Enterprise | | explained | |
| | | | 63:10 | |
| | | | experience | |
| | | | 64:2 | |
| | | | 65:23 | |
| | | | explains | |
| | | | 66:1 | |
| | | | explaining | |
| | | | 67:1 | |
| | | | explains | |
| | | | 68:1 | |
| | | | explains | |
| | | | 69:1 | |
| | | | explains | |
| | | | 70:1 | |
| | | | explains | |
| | | | 71:1 | |
| | | | explains | |
| | | | 72:1 | |
| | | | explains | |
| | | | 73:1 | |
| | | | explains | |
| | | | 74:1 | |
| | | | explains | |
| | | | 75:1 | |
| | | | explains | |
| | | | 76:1 | |
| | | | explains | |
| | | | 77:1 | |
| | | | explains | |
| | | | 78:1 | |
| | | | explains | |
| | | | 79:1 | |
| | | | explains | |
| | | | 80:1 | |
| | | | explains | |
| | | | 81:1 | |
| | | | explains | |
| | | | 82:1 | |
| | | | explains | |
| | | | 83:1 | |
| | | | explains | |
| | | | 84:1 | |
| | | | explains | |
| | | | 85:1 | |
| | | | explains | |
| | | | 86:1 | |
| | | | explains | |
| | | | 87:1 | |
| | | | explains | |
| | | | 88:1 | |
| | | | explains | |
| | | | 89:1 | |
| | | | explains | |
| | | | 90:1 | |
| | | | explains | |
| | | | 91:1 | |
| | | | explains | |
| | | | 92:1 | |
| | | | explains | |
| | | | 93:1 | |
| | | | explains | |
| | | | 94:1 | |
| | | | explains | |
| | | | 95:1 | |
| | | | explains | |
| | | | 96:1 | |
| | | | explains | |
| | | | 97:1 | |
| | | | explains | |
| | | | 98:1 | |
| | | | explains | |
| | | | 99:1 | |
| | | | explains | |
| | | | 100:1 | |
| | | | explains | |
| | | | 101:1 | |
| | | | explains | |
| | | | 102:1 | |
| | | | explains | |
| | | | 103:1 | |
| | | | explains | |
| | | | 104:1 | |
| | | | explains | |
| | | | 105:1 | |
| | | | explains | |
| | | | 106:1 | |
| | | | explains | |
| | | | 107:1 | |
| | | | explains | |
| | | | 108:1 | |
| | | | explains | |
| | | | 109:1 | |
| | | | explains | |
| | | | 110:1 | |
| | | | explains | |
| | | | 111:1 | |
| | | | explains | |
| | | | 112:1 | |
| | | | explains | |
| | | | 113:1 | |
| | | | explains | |
| | | | 114:1 | |
| | | | explains | |
| | | | 115:1 | |
| | | | explains | |
| | | | 116:1 | |
| | | | explains | |
| | | | 117:1 | |
| | | | explains | |
| | | | 118:1 | |
| | | | explains | |
| | | | 119:1 | |
| | | | explains | |
| | | | 120:1 | |
| | | | explains | |
| | | | 121:1 | |
| | | | explains | |
| | | | 122:1 | |
| | | | explains | |
| | | | 123:1 | |
| | | | explains | |
| | | | 124:1 | |
| | | | explains | |
| | | | 125:1 | |
| | | | explains | |
| | | | 126:1 | |
| | | | explains | |
| | | | 127:1 | |
| | | | explains | |
| | | | 128:1 | |
| | | | explains | |
| | | | 129:1 | |
| | | | explains | |
| | | | 130:1 | |
| | | | explains | |
| | | | 131:1 | |
| | | | explains | |
| | | | 132:1 | |
| | | | explains | |
| | | | 133:1 | |
| | | | explains | |
| | | | 134:1 | |
| | | | explains | |
| | | | 135:1 | |
| | | | explains | |
| | | | 136:1 | |
| | | | explains | |
| | | | 137:1 | |
| | | | explains | |
| | | | 138:1 | |
| | | | explains | |
| | | | 139:1 | |
| | | | explains | |
| | | | 140:1 | |
| | | | explains | |
| | | | 141:1 | |
| | | | explains | |
| | | | 142:1 | |
| | | | explains | |
| | | | 143:1 | |
| | | | explains | |
| | | | 144:1 | |
| | | | explains | |
| | | | 145:1 | |
| | | | explains | |
| | | | 146:1 | |
| | | | explains | |
| | | | 147:1 | |
| | | | explains | |
| | | | 148:1 | |
| | | | explains | |
| | | | 149:1 | |
| | | | explains | |
| | | | 150:1 | |
| | | | explains | |
| | | | 151:1 | |
| | | | explains | |
| | | | 152:1 | |
| | | | explains | |
| | | | 153:1 | |
| | | | explains | |
| | | | 154:1 | |
| | | | explains | |
| | | | 155:1 | |
| | | | explains | |
| | | | 156:1 | |
| | | | explains | |
| | | | 157:1 | |
| | | | explains | |
| | | | 158:1 | |
| | | | explains | |
| | | | 159:1 | |
| | | | explains | |
| | | | 160:1 | |
| | | | explains | |
| | | | 161:1 | |
| | | | explains | |
| | | | 162:1 | |
| | | | explains | |
| | | | 163:1 | |
| | | | explains | |
| | | | 164:1 | |
| | | | explains | |
| | | | 165:1 | |
| | | | explains | |
| | | | 166:1 | |
| | | | explains | |
| | | | 167:1 | |
| | | | explains | |
| | | | 168:1 | |
| | | | explains | |
| | | | 169:1 | |
| | | | explains | |
| | | | 170:1 | |
| | | | explains | |
| | | | 171:1 | |
| | | | explains | |
| | | | 172:1 | |
| | | | explains | |
| | | | 173:1 | |
| | | | explains | |
| | | | 174:1 | |
| | | | explains | |
| | | | 175:1 | |
| | | | explains | |
| | | | 176:1 | |
| | | | explains | |
| | | | 177:1 | |
| | | | explains | |
| | | | 178:1 | |
| | | | explains | |
| | | | 179:1 | |
| | | | explains | |
| | | | 180:1 | |
| | | | explains | |
| | | | 181:1 | |
| | | | explains | |
| | | | 182:1 | |
| | | | explains | |
| | | | 183:1 | |
| | | | explains | |
| | | | 184:1 | |
| | | | explains | |
| | | | 185:1 | |
| | | | explains | |
| | | | 186:1 | |
| | | | explains | |
| | | | 187:1 | |
| | | | explains | |
| | | | 188:1 | |
| | | | explains | |
| | | | 189:1 | |
| | | | explains | |
| | | | 190:1 | |
| | | | explains | |
| | | | 191:1 | |
| | | | explains | |
| | | | 192:1 | |
| | | | explains | |
| | | | 193:1 | |
| | | | explains | |
| | | | 194:1 | |
| | | | explains | |
| | | | 195:1 | |
| | | | explains | |
| | | | 196:1 | |
| | | | explains | |
| | | | 197:1 | |
| | | | explains | |
| | | | 198:1 | |
| | | | explains | |
| | | | 199:1 | |
| | | | explains | |
| | | | 200:1 | |
| | | | explains | |
| | | | 201:1 | |
| | | | explains | |
| | | | 202:1 | |
| | | | explains | |
| | | | 203:1 | |
| | | | explains | |
| | | | 204:1 | |
| | | | explains | |
| | | | 205:1 | |
| | | | explains | |
| | | | 206:1 | |
| | | | | |

SEAN P. TRENDE
FAIR FIGHT ACTION vs BRAD RAFFENSPERGERApril 16, 2020
Index: expose..gold

| | | | | |
|---------------------|----------------------|------------------|--------------------|--------------------|
| expose | fall | finding | 53:7 54:8 | 31:5,7 |
| 53:5 | 7:23,24 | 67:14 | 59:7 60:7 | 56:13 |
| expressing | 10:16 | fine | 63:3,23 | 60:15 |
| 13:23 | falling | 51:24 | 69:6 | generally |
| extent | 61:4 | 55:3,15 | 71:22 | 33:18 |
| 29:25 | falls | 76:14 | 72:12 | 43:7 |
| 30:1,19, 20,22 | 32:6 | finish | formal | 65:10 |
| 32:6 | familiar | 19:19 | 38:6,7 | 66:8 |
| 35:14 | 33:17 | 21:17 | forming | generate |
| 51:22 | 50:4 | finished | 13:22 | 21:8 |
| 62:25 | fan | 17:6 | 14:13 | 37:12 |
| 71:25 | 16:12 | 19:14 | formulated | generated |
| | | 33:1 | 63:19 | 10:20,24 |
| <hr/> | | | | |
| F | farther | fish | formulation | 16:3 |
| | 12:9 | 35:7 | 21:1 | 33:13 |
| | fault | fits | forward | 57:18 |
| Facebook | 61:24 | 51:6 | 40:14 | generating |
| 49:4,19, 22 50:5 | favored | focus | forwarded | 57:25 |
| 51:14 | 65:10 | 59:19,22 | 7:1 | Gentlemen |
| 52:8,14 | federal | follow | founder | 75:24 |
| 53:2 | 4:17 | 23:12 | fourth | Georgia |
| 55:19,21 | 44:9,11, 16,18,19 | 75:18 | 67:22 | 5:22 |
| fact | 75:15 | follow-up | Fox | 44:21 |
| 22:13 | feel | 72:21 | 48:7 49:1 | 45:15,20 |
| facts | 70:18 | Ford | 47:3 | 46:10,12 |
| 13:21 | figured | 55:23 | front | 58:25 |
| 38:20,22 | 28:4 | 57:2 | 10:22 | Gerald |
| 39:3,7 | file | foregoing | 16:1 | 55:23 |
| 74:15,17 | 26:25 | 76:11 | 67:19 | 57:2 |
| fading | filed | forget | full | gerrymander |
| 15:12 | 67:3 | 12:24 | 13:17 | ing |
| failed | final | forgotten | functionall | 32:16 |
| 66:19 | 37:13 | 54:24 | y | 34:9 |
| fair | finalizing | form | 27:5,21 | give |
| 5:2,6,14 | 41:23 | 6:6 29:17 | | 7:20,22, |
| 24:24 | | 34:22 | G | 25 16:13 |
| 29:6,8 | find | 36:20 | | 22:18 |
| 42:20 | 63:14 | 37:1 | gathers | 75:3 |
| fairly | 67:23 | 38:20 | 42:21 | gold |
| 25:2 48:3 | 68:13 | 50:10 | | 67:10 |
| 62:3 | 76:16 | 52:23 | general | |

SEAN P. TRENDE
FAIR FIGHT ACTION vs BRAD RAFFENSPERGER

April 16, 2020
Index: good..including

| | | | | |
|-------------------|-------------------------|-------------------|--------------------|--------------------|
| 68:17 | 70:22 | 71:1, 4 | hope | 54:21 |
| 69:1 | great | hate | 9:6 | identify |
| good | 51:11 | 39:4 | hoping | 13:21 |
| 4:13 11:9 | 67:21 | HB589 | 33:10 | 14:12 |
| 12:20 | greater | 34:15 | horribly | identifying |
| 64:11, 22 | 62:5, 12, 15 63:6, 8 | head | 53:24 | 14:14 |
| gotcha | 22:25 | 8:20, 21 | horrified | ideological |
| 22:15 | grinding | 10:7, 8 | 26:9 | 56:21 |
| 68:7 | 22:25 | 67:16 | hour | ignores |
| govern | ground | headline | 13:6 | 61:7 |
| 36:25 | 39:8 | 42:11 | hourly | II |
| Government | gubernatori | hear | 13:4 | 38:25 |
| 18:25 | al | 5:4 15:8 | housekeepin | image |
| governor's | 44:21 | 17:23 | g | 76:5 |
| 46:1, 12 | 45:14, 20, | heard | 75:9 | imagine |
| graduate | 25 46:10 | 16:12 | hypotheses | 5:21 9:5 |
| 17:10 | 47:4 | 49:24, 25 | 20:18 | 28:17 |
| granted | guess | 50:2, 19 | 71:5 | 38:10 |
| 35:13, 17 | 57:15 | hearing | hypothesis | 60:21 |
| Graves | 65:18 | 28:12 | 20:12, 18 | impair |
| 13:24 | 71:1, 3, 21 | helpfully | 21:1, 20 | 5:9 |
| 14:6 | <hr/> | 13:25 | 60:24 | imply |
| 54:17 | H | 38:25 | 62:25 | 68:21 |
| 57:18, 24 | <hr/> | herring | 63:6, 11 | improper |
| 58:7, 10, | half | 35:6 | 64:4, 6 | 64:25 |
| 18 59:2 | 45:17, 18 | hide | 68:18 | 65:1, 3 |
| 60:4 | handle | 41:3, 17 | 70:3, 7, | inactive |
| 61:20, 21 | 35:19 | 44:1 | 14, 17 | 72:25 |
| 62:2, 23 | handled | Hillary | <hr/> | 73:4 |
| 63:19 | 36:3 | 53:3 | I | inaudible |
| 64:13 | handwrite | history | I.D. | 15:5 |
| 65:25 | 76:9 | 34:2 | 41:21 | 73:15 |
| 66:12, 19 | handwritten | holding | idea | include |
| 68:10 | 10:6 | 50:16 | 38:14, 17 | 21:19 |
| Graves' | hard | homophobic | identical | 39:7 64:5 |
| 14:25 | 56:22 | 52:21 | 27:4, 5 | included |
| 38:22 | hat | honestly | identificat | 13:24 |
| 54:3, 14 | 30:1, 6, 7 | 41:17 | ion | including |
| 57:22 | 69:16 | 73:22 | 6:14 41:6 | 13:19 |
| 61:19 | 70:23, 25 | 76:4 | 48:16 | 14:10 |
| 63:10 | | | | |
| 64:24 | | | | |
| 67:8, 17 | | | | |

SEAN P. TRENDE April 16, 2020
 FAIR FIGHT ACTION vs BRAD RAFFENSPERGER Index: incorrect..legal

| | | | | |
|-----------------------------|--------------------|--------------------|-------------------|----------------|
| 33:25 | 22:19 | 36:7 | judge | land |
| incorrect | intend | 46:11 | 36:19,24 | 53:18 |
| 66:1 | 31:16 | 47:8,9 | judgment | 67:6 |
| increase | 36:24 | 49:14 | 65:7 | late |
| 63:1 | intended | 51:12,15 | | 17:21 |
| increased | 62:1 | 52:8 | justify | |
| 63:2,12, 13 65:20, 21 | intentional | 66:25 | 66:12 | law |
| | 8:24 | | 67:1 | 5:19 |
| | interaction | | justifying | 16:4,11 |
| individual | 33:22 | 49:19 | 35:4,6,19 | |
| 11:21 | interest | 51:2 | 66:10 | 36:12,17, |
| individual | 65:16 | 52:12 | | 18,24 |
| y | interested | | | |
| 12:2 | 21:2 56:8 | involvement | K | laws |
| influential | interpret | 21:1 | | 34:16 |
| 48:6 | 36:3 | 61:13 | kids | 36:12 |
| informal | interpretat | irrelevant | 70:10 | lawsuit |
| 38:7,9 | ion | 31:3 | kind | 38:5 |
| information | 36:18 | Islam | 8:19 | |
| 22:14 | interpretat | 53:5 | 20:10,11 | lawyer |
| 75:15 | ions | Islamophobi | 21:10 | 30:1,6 |
| informative | 36:17 | 22:25 | 22:25 | 68:11 |
| 30:3,4 | interpretin | C | 31:8 42:8 | lawyers |
| initial | 71:21 | 50:7 | 46:18 | 29:24 |
| 8:13 66:4 | g | issue | 48:22 | lay |
| | 36:7 | 29:11 | 50:5 53:9 | 51:12 |
| instance | Intro | 60:3 | 55:18 | 61:13 |
| 21:9 | 18:20 | 71:21 | 56:21,24 | 62:21 |
| 50:14 | | 72:10 | 58:11 | 66:1 |
| 64:25 | invention | issues | 62:21 | |
| 67:15 | 53:17 | 39:15,23 | lays | |
| Institute | invoice | 41:9,13 | 71:15 | 48:20 |
| 55:24 | | 72:14 | learn | |
| 56:9,12, | | J | kneeling | 39:6 |
| 14 57:6 | | | 53:15 | learned |
| institution | involve | | knowledge | 36:2 |
| 16:14 | 65:7 | jail | 6:3 23:6 | leave |
| 21:10 | | 53:3 | 28:8 | 30:6 |
| instructing | involved | John | 49:16 | 75:24 |
| 75:12 | 11:15 | 47:18 | | left |
| | 27:2 | Jones | | 5:19 |
| intelligent | 35:3,20 | 36:24 | L | 61:10 |
| | | laid | | legal |
| | | Journal | 51:17 | 31:11,13, |
| | | 48:8 | | 20,22 |

SEAN P. TRENDE April 16, 2020
 FAIR FIGHT ACTION vs BRAD RAFFENSPERGER Index: legislative..minute

| | | | | |
|--------------------|-------------------|-------------------|----------------|--------------------|
| 34:20 | Listen | 14:15 | 33:1 | membership |
| 35:2, 5, 24 | 53:4 | main | 73:9 | |
| 36:2, 21 | lists | 72:15 | 53:16, 18 | meme |
| 37:3 | 48:6 | mainstream | 52:15, 18 | |
| 38:14 | | 34:16 | 53:1, 22 | |
| 66:15, 17 | literally | 14:16 | | |
| 69:16 | 68:3 | 38:5 | | memes |
| 70:23, 25 | literature | 42:1, 4 | 50:7 | |
| | | 61:17 | | |
| legislative | 20:8 | majority | | memory |
| 27:3 | 21:19, 20 | 29:9, 13 | 11:9 | |
| | 67:13 | | | |
| lengths | 70:15 | majority- | 30:23 | mentioned |
| 51:11 | | majority | 33:12, 17 | 24:16 |
| | | 29:16 | | |
| lens | litigation | 30:20 | | |
| 46:2 | 42:1, 4 | 32:7 | 33:12 | mess |
| | | | | 47:10 |
| letter | location | minority | | |
| 11:10 | 59:6 | 29:15 | | Meta- |
| 12:1, 10, | long | make | | analysis |
| 24 | 55:8 56:1 | 15:15 | 43:20, 22, | |
| | 71:2 | 23:9 | 25 44:7 | |
| letters | | | | |
| 13:2 40:7 | longer | 24:14 | method | |
| | 29:13, 14 | 39:21 | 59:23 | |
| level | 55:6 | 40:13 | | |
| 68:22 | 57:13 | 51:21 | 47:18, 21 | |
| 69:2, 12, | 63:21 | 52:2, 4, 6 | 48:2 | methodology |
| 13, 20 | 65:17 | 67:25 | 49:12, 18 | 24:13 |
| 70:21 | | | | 65:25 |
| | | makes | | 66:3 |
| liberal | 14:21 | 58:24 | | Michigan |
| 48:22 | 46:1 | man | 65:3 70:6 | 16:12 |
| 56:20 | | 47:24 | | |
| 57:1 | lot | 53:15 | Media | Middle |
| | 10:12 | | 18:24 | 15:20 |
| lies | 12:10 | maps | | mind |
| 67:5 | 13:1 | 27:2, 7, 9, | | 5:4 6:24 |
| | 22:19 | 10 | 5:8 | 72:7 |
| limine | 32:18 | | meeting | |
| 28:17 | 43:24 | mark | 50:19 | mine |
| | 62:21 | 48:11, 13 | | 30:22 |
| limit | | marked | | |
| 28:15, 21 | | 6:13 | 23:21, 25 | |
| 35:9 | lower | 48:15 | 24:7, 10, | minority |
| | 61:13 | 54:20 | 11 72:23, | 29:14 |
| limiting | | | 24, 25 | |
| 39:22 | | | | minors |
| 40:13 | | | | 23:15 |
| | | master's | members | |
| lines | | 16:5, 18, | 17:20 | |
| 29:13 | made | 22 21:14 | | minute |
| | | | | |

SEAN P. TRENDE April 16, 2020
 FAIR FIGHT ACTION vs BRAD RAFFENSPERGER Index: minutes..opinion

| | | | | |
|-----------------|--------------------|--------------------|----------------------|------------------------|
| 75:4 | 17 | 48:25 | 50:8,10, 25 52:23 | 34:19 |
| minutes | narrow | notes | 53:7 54:8 | 45:10 |
| 33:12 | 20:7 | 8:12,19 | 59:7 60:7 | offering |
| 55:14 | nasty | 10:1 | 63:3,23 | 29:12 |
| misheard | 25:8,25 | notice | 69:6 | 34:14 |
| 52:9 | 26:4 | 6:10,18 | 71:22 | offices |
| mission | 53:8,9 | 7:11 9:25 | 72:1,12, | 44:9,11 |
| 56:16 | nature | noticed | 19 74:9, 18 | Ohio |
| misstate | 41:11,18 | 25:20 | | 16:8,13 |
| 56:17 | necessarily | notwithstan | objected | 18:12,21, |
| modeling | 20:22 | ding | 31:22 | 23 23:14 |
| 19:13 | 68:17 | 14:2 | 75:10 | one-sided |
| Mohammed | needed | 36:16 | objecting | 60:5 |
| 53:17 | 14:2 | 59:21 | 66:4 67:3 | 66:20 |
| month | news | null | objection | one-stop |
| 7:25 | 48:7,21 | 60:24 | 30:13 | 42:25 |
| 10:10,21 | 49:1 | 63:6 | 59:9 71:9 | one-tailed |
| morning | nonhispanic | 68:18 | 72:15 | 60:9,15, |
| 4:13 7:15 | 62:6 | 70:3,14, | 75:2 | 18 61:6, |
| motion | nontestifyi | 16 71:5 | objections | 12,13 |
| 28:17,21 | ng | number | 6:6 | 62:8,18 |
| 29:1 | 39:14 | 7:10 | observation | 63:5,10, |
| motions | 40:12 | 68:1,2 | 67:8 | 16 64:12, |
| 28:15 | 74:23 | numbered | observed | 15,19,22, |
| move | nontrump | 72:17 | 67:9 | 24 65:8, |
| 15:12 | 56:25 | | observing | 11 66:6, |
| 51:21 | normal | O | 68:14 | 10,12 |
| moving | 10:14 | O'Rourke | obtain | 67:8 |
| 12:19 | North | 50:23 | 13:25 | online |
| MSNBC | 15:20 | oath | 14:3,6 | 18:17 |
| 49:1 | 21:21 | 4:25 | occasion | 19:4,6 |
| Muslim | 26:12 | Obama | 47:24 | 42:18 |
| 53:15 | 27:2 | 53:4 | October | 56:16 |
| | 28:13 | object | 32:20 | opine |
| | 36:12 | 29:17 | | 41:25 |
| N | notarized | 32:1 | | 42:3 |
| | 76:6 | 34:22 | offensive | opinion |
| NAACP | notary | 36:20 | 53:25 | 27:8 |
| 34:11 | 76:13 | 37:1 | offer | 29:12 |
| 35:23 | note | 39:12 | 23:14 | 31:20,23 |
| 36:6,10, | | | offered | 34:14,20 |
| | | | 15:4,10 | 35:1,2,4, 5,6,9,14, |

SEAN P. TRENDE April 16, 2020
 FAIR FIGHT ACTION vs BRAD RAFFENSPERGER Index: opinions..plaintiffs'

| | | | | |
|----------------------|-------------------|----------------------|-------------------|----------------------|
| 17:23 | outlets | pardon | 20:7 | permissible |
| 36:6,11 | | 48:21 | 53:5 | 21:8,18, 20 67:13 |
| 38:3 | outlines | parse | 20:11 | personal |
| 39:2,10 | | | | 11:20 |
| 40:19 | 12:10 | | 76:10 | 37:16 |
| 41:1,7 | | part | | |
| 42:6,11 | P | 21:15 | Penny | personally |
| 54:2,4,10 | | 59:19 | 6:11 | 11:13 |
| 57:25 | P-A-T-R-I- | participate | 15:13 | Pete |
| 58:16 | C-K | d | people | 52:15 |
| 59:21 | 4:21 | 21:16 | 22:19 | Ph.d. |
| 67:4 | | | 24:8 26:9 | 17:2 18:1 |
| 70:22 | P-H | participati | 41:14 | 21:15 |
| 72:5 | 53:20 | on | 57:12 | 23:20 |
| opinions | p-value | 18:9 | 67:14 | |
| 13:23 | | parties | | phone |
| 14:14 | | 27:22 | peppered | 8:4 |
| 15:5,10 | 67:14 | | 44:12 | |
| 28:15 | 69:8 | partisan | | photo |
| 38:4,6,9, | 70:1,2,6, | 53:6 | percent | 41:21 |
| 20 41:22 | 16 71:6 | | 44:18 | |
| 61:18 | p.m. | parts | 59:5 | photographi |
| 74:17 | 75:6 | 71:16 | 61:7,9, | c |
| opposed | paid | pass | 14,15 | 41:5 |
| 64:19 | 13:15,17 | 73:7 | 67:11 | picture |
| opposing | 74:4 | | 68:17,22 | 41:4,7 |
| 35:8 | paint | passed | 69:7,12, | 50:16 |
| oral | 51:23 | 73:15,17 | 13,21 | 51:23 |
| 12:6 | panel | past | 71:12 | 53:3 |
| order | 32:22 | 18:19 | percentage | piece |
| 19:12 | | 30:15 | 44:15,16, | 10:25 |
| 23:13 | paper | 31:24 | 17 58:21 | 11:4 68:6 |
| 41:20 | 9:4,18 | 41:5 49:5 | 59:5 | pieces |
| organizations | 11:1,4 | 57:12 | perform | 57:14 |
| 23:17,22 | 20:16,17 | 63:20 | 44:4 | 71:20 |
| 24:3,9 | 33:21 | Patrick | 64:18 | pin |
| original | 38:18 | 4:20 | performed | 38:13 |
| 16:23 | 68:6 | patterns | 10:2 | plaintiff |
| outfit | papers | 19:11 | period | 27:12 |
| 51:15 | 19:15 | pay | 11:25 | |
| outlet | paragraph | 72:25 | 40:10 | plaintiffs |
| 57:13 | 48:4,18, | peer | periphery | 4:14 |
| | 25 67:22 | 47:12 | 46:19 | plaintiffs' |
| | 68:8 | peer-reviewed | perjury | 6:13 |
| | 72:16 | | 76:10 | 14:22 |

SEAN P. TRENDE April 16, 2020
 FAIR FIGHT ACTION vs BRAD RAFFENSPERGER Index: plan..province

| | | | | |
|------------------|------------------|--------------------|--------------------|--------------------|
| 48:15 | 48:6, 8 | predictions | probability | progress |
| 54:17, 20 | 53:10 | 24:14 | 61:2, 3 | 21:4 |
| plan | poll | premise | 62:4, 9, 11 | prong |
| 37:4 | 44:6 | 59:25 | 67:9, 23 | 71:3 |
| planned | 46:17 | prepare | 68:13 | |
| 55:6 | polling | 14:18 | 70:10 | prongs |
| planners | 46:17 | president | 70:4, 5 | pronounce |
| 25:9, 13 | 58:21 | 26:9 | | 22:23 |
| playing | 59:6 | presidentia | 55:1 | pronunciati |
| 41:3, 17 | polls | 1 | | on |
| point | 43:16, 18, | 50:22 | process | 23:1 |
| 9:14 33:9 | 21, 24 | | 56:6 | |
| 39:15 | pollster | 21:2 | 69:24 | proper |
| 49:13 | 45:3 | | 76:15 | 16:14 |
| pointing | pool | pretty | produce | Prophets |
| 50:17 | 30:12 | 11:9 12:6 | 9:13 | 53:19 |
| points | position | 26:4 53:6 | 42:24 | proposed |
| 46:20 | 66:2 | prevent | profession | 72:1 |
| polarized | positive | 36:11 | 69:17 | proposes |
| 25:9 | 58:20, 25 | preventing | professiona | 63:5 |
| political | 59:4 | 36:13 | 1 | protecting |
| 16:5 | 63:11, 15 | previous | 21:6 | 41:2 |
| 21:23 | 68:23 | | 23:17, 22 | |
| 22:4, 5, 8 | 69:22 | primarily | 24:3, 9 | provide |
| 23:24 | 71:12 | 44:9, 11 | professiona | 11:17, 24 |
| 24:5, 17, | post | primary | 12:11 | |
| 23 25:10, | 52:21 | 24:10 | 39:10, 13 | |
| 11, 14, 16, | 53:13, 25 | 54:4 60:3 | 40:19, 25 | |
| 19, 24 | posted | professor | 41:1 | |
| 26:3 31:9 | 50:16 | 22:9 | provided | |
| 33:19 | 52:15 | printed | 11:3, 11 | |
| 34:9 | 53:2 | 67:20 | 13:5, 22 | |
| 42:22 | practice | prior | 14:3, 8, | |
| 43:1, 7 | 5:19 8:18 | 37:13 | 13, 21 | |
| 48:21 | 40:11 | 39:20 | 17:1 36:6 | |
| 51:13 | 9:17 | 40:11 | 38:3, 25 | |
| 70:15 | practiced | 71:17 | program | 40:12 |
| 71:4 | 35:19 | private | 18:1 | 54:14 |
| politics | prayer | 49:17 | 21:15 | 74:15, 22 |
| 18:20 | 53:16, 18 | 5:19, 22 | 33:5, 6, 7, | providing |
| 25:8 31:8 | precise | 6:1, 6 | 11 | 12:5 |
| 32:5 | 73:12 | | programs | 36:16 |
| | | | 23:16 | province |

SEAN P. TRENDE April 16, 2020
 FAIR FIGHT ACTION vs BRAD RAFFENSPERGER Index: psephologist..reconfigure

| | | | | |
|--------------------|--------------------|------------------|--------------------|---------------------|
| 36:19,22 | 25:10,11 | | 67:10 | Realpolitick |
| psephologis | 44:15 | R | read | s |
| t | 65:18 | | 33:15,16, | 11:14 |
| 22:17,21 | 69:15 | race | 21 34:6 | reason |
| 23:1,3,13 | putting | 44:21 | 36:2,15 | 17:18 |
| psephologis | 30:1 | 45:4,14, | 50:11 | 22:10,11 |
| ts | | 20 46:1, | 53:4,16, | 58:13 |
| 23:18 | Q | 10,12,20 | 23 63:24 | 64:11,22 |
| 24:4,14 | | 47:4,5,8 | 68:24,25 | 70:13,21 |
| psephology | qualificati | 54:5,11 | 76:3,5,17 | 72:20 |
| 23:5 | ons | races | readers | reasonable |
| public | 15:4 | 43:13 | 43:1 | 71:7 |
| 24:24 | quarrel | 44:9,10, | reading | rebuttal |
| 52:12 | 58:14 | 12 45:25 | 36:7 | 57:17,19 |
| publication | question | 46:16,18, | 50:18 | 67:18,19 |
| 42:19 | 5:5,6,12, | 24,25 | real | 71:16 |
| publish | 13 6:23 | 47:6 | 23:9,11 | 72:10 |
| 43:3,6 | 14:3 15:8 | raised | Realclear | recall |
| 47:11 | 29:19,20 | 57:10 | 20:1,2,11 | 7:3 8:6,7 |
| 57:14 | 31:11,13, | raises | Realclearpo | 22:1 |
| published | 14,16 | 59:9 | litics | 26:22 |
| 20:7 | 32:2 35:1 | rate | 32:10,23 | |
| 44:20 | 39:4 | 11:14,15 | 33:8,9 | |
| 45:14 | 45:13 | 13:4,7 | 19:22 | 34:14,17 |
| 47:15 | 54:23 | 43:12 | 20:4 | 37:19,23 |
| 49:14 | 59:1,3,24 | rated | 25:18 | 40:9 |
| 55:20 | 60:2 | 46:9,13 | 42:13 | 67:17 |
| 58:1 | 65:13,15, | 47:7 | 43:10 | |
| publishes | 18 66:7, | rating | 44:4,8 | received |
| 42:22 | 24 | 45:24 | 47:12,17 | 6:25 |
| pull | questions | 46:15 | 48:5,20 | receiving |
| 48:9 | 5:3 6:19 | ratings | 49:4 | 37:23 |
| purpose | 65:12 | 47:5,8 | 57:7,12, | recently |
| 56:13 | 72:14,22 | rationale | 15 | 34:7 |
| purposes | 75:10,13 | 64:14 | Realclearpo | 36:15 |
| 4:17 | quote | 66:1 | litics' | recess |
| pursuant | 48:5 | RCP | 49:18 | 55:17 |
| 12:6 40:7 | 52:17 | 57:10 | Realclearpo | 75:6 |
| 76:10 | 53:4,16 | reached | litics.com. | recollection |
| put | quote- | 21:6 | 42:12 | n |
| | unquote | 54:12 | realignment | 12:3 32:9 |
| | 67:10 | reaching | 19:13 | 35:15 |
| | | | | reconfigure |

SEAN P. TRENDE April 16, 2020
 FAIR FIGHT ACTION vs BRAD RAFFENSPERGER Index: record..restroom

| | | | | |
|---------------------|--------------------|------------------------------|-----------------------|--------------------|
| 17:21 | 40:20 | 16 60:24, 25 63:11, 15 | repeated | 4:19 |
| record | reforms | | | |
| 6:12,20 | 34:15 | | | |
| 9:4 10:1, 5,9 | refresh | relayed | replicating | reports |
| 27:23,24 | 32:9 | 59:20 | 58:9 | 14:1,7 |
| 51:25 | refused | relevance | report | 57:14,15 |
| 52:2,4,7 | 41:5 | 31:14,15, 16 51:1 | 13:25 | represent |
| 55:13 | registered | | 14:16 | 4:14 |
| 71:2 | 63:2,13 | relevant | 15:23 | represented |
| 72:10 | | 30:21 | 16:4,17 | 5:16 |
| 76:1 | regression | 31:10 | 26:10,20, 21,24,25 | Republicans |
| | 64:9 | 32:4,8 | 27:25 | 27:9 |
| red | | | | |
| 35:6 | regular | relied | 28:22 | request |
| | 68:11 | 14:13 | 29:3 | 7:10 9:13 |
| redact | reject | 38:20 | 33:13,16 | |
| 12:14 | 68:18 | reluctant | 35:9 | requests |
| redacted | 70:13,16 | 25:9,11 | 37:6,8,10 | 7:15 |
| 12:11 | | | 38:17,19, | research |
| redistricte | rejected | rely | 23 39:3, | 16:23 |
| r | 71:6 | 39:2 | 7,9,11 | |
| 23:8 | rejection | 46:17 | 40:20 | reserving |
| | 70:22 | 64:4 | 41:23 | 6:5 |
| redistricti | relate | relying | 48:4,9, | respect |
| ng | 9:21 | 66:25 | 11,13,19 | 14:16 |
| 23:8 | 31:18 | remember | 51:11,18, | 35:14 |
| 29:7,10 | 57:6 | 8:11 | 22 54:14, | 39:5 |
| 30:8,16, | | 10:12 | 18 57:17, | 74:15 |
| 21 31:1, 2,17,24 | related | 13:3,12 | 19 58:5, | 75:11 |
| 32:7 | 7:10 38:5 | 18:8 | 8,9,12, | response |
| 33:23 | 42:1,4 | 24:1,20 | 15,24 | 54:16 |
| 34:2,8 | 43:8 | 34:12 | 59:17 | 55:5 |
| 35:21 | relates | 36:13 | 66:4 | |
| | 20:21 | 37:14,25 | 67:2,3, | 73:19 |
| reference | 32:4 | 41:4,8, | 18,19 | responsibil |
| 19:25 | 40:17 | 19,20 | 68:1 | ities |
| 50:21 | 54:3 64:3 | 42:10 | 71:16,17, | 17:25 |
| references | relationshi | 44:22 | 20 72:5, | responsibil |
| 67:25 | p | 45:5,12, | 7,10 | ity |
| referencing | 5:21,23 | 16 62:6 | report's | 51:3 |
| 20:20 | 6:2 47:21 | remotely | 39:16 | responsive |
| 21:3 | 48:2 54:5 | 18:5 | reported | 7:14 |
| reflected | 57:16 | | 14:7 | 12:12 |
| 39:11 | 58:20,25 | repeat | reporter | restroom |
| | 59:4,14, | 5:4 42:2 | | |

SEAN P. TRENDE April 16, 2020
 FAIR FIGHT ACTION vs BRAD RAFFENSPERGER Index: result..significance

| | | | | |
|-------------------|----------------|-------------------|------------------|---------------------|
| 55:7,10 | 73:5 | 67:9 | 21:14 | 7:18 8:9, |
| result | roof | 68:14 | selection | 14 9:7 |
| 28:20 | 53:20 | Sanders | 56:6 | 10:17 |
| 35:12 | rough | 52:16 | semester | setting |
| 61:3 | 76:21 | scarlet | 18:3,6,23 | 21:6 |
| 63:14 | | 35:7 | semesters | share |
| results | Rucho | scholar | 18:21 | 61:2 |
| 58:9,14 | 15:18,19, | 55:23 | Senate | 63:1,12 |
| 67:9 | 20 26:13, | 56:2,8 | | 65:21 |
| 68:14 | 24 29:3 | 57:2 | 45:4 | sharing |
| 70:4,5,8 | 32:9,14, | | send | 37:19 |
| | 15 33:24 | scholars | 12:17 | |
| retained | rule | 57:1 | 76:5 | sheet |
| 10:24 | 5:18 | school | | 76:9 |
| 11:13,14 | ruled | 16:11 | senior | shop |
| 39:20 | 29:1 | 18:4 | 43:9,12 | 42:25 |
| 40:11 | Rules | science | sentence | shortcut |
| 74:20 | | 16:5 22:8 | 69:11 | 61:1 |
| retention | | 23:24 | 70:3 | |
| 39:22 | 75:16 | 31:9 | 71:10 | shortcutting |
| review | ruling | 70:15 | sentiment | g |
| 57:21 | 28:23 | 71:4 | 25:24 | 62:20 |
| reviewed | 29:5 | scientific | 26:2 | shortly |
| 14:25 | run | 71:7 | 30:17 | 13:10 |
| 33:13 | 45:23 | scientist | | 17:9 |
| 47:12,14 | 49:4 | 21:23 | separate | |
| 57:19 | 57:11 | 22:4,6 | 40:7 | showed |
| 71:17 | 70:7 | 33:19 | 62:18 | 53:15 |
| reviewing | running | | 73:23 | shutdowns |
| 57:18 | 32:19 | scientists | September | 25:21 |
| right-hand | rush | 24:6 | 50:14,15 | side |
| 47:24 | 76:19 | scope | 53:15 | 9:10 |
| rights | Ryan | 74:7 | series | 61:4,8,10 |
| 35:20 | 56:7,10 | Sean | 47:6 | 62:9 64:5 |
| 36:4 | | 4:16,20 | service | sides |
| robust | S | 48:13 | 9:16 | 48:21 |
| 46:17 | | 54:18 | services | 51:12 |
| role | S-E-A-N | season | 11:2,10, | sign |
| 57:5 | 4:20 | 7:22 | 18,24 | 76:3,17 |
| 74:16 | sake | secretly | 12:5 13:4 | signature |
| 75:11 | 6:20 | 49:4 | 39:14 | 76:5 |
| rolls | sample | seeking | 40:12,18 | significance |
| | | serving | | |

SEAN P. TRENDE
FAIR FIGHT ACTION vs BRAD RAFFENSPERGER

April 16, 2020
Index: significant..stuff

| | | | | |
|--------------------|--------------------|-----------------|--------------------|--------------------|
| 66:5 | 50:7 | speeches | 17 45:4,5 | Stephen |
| 67:4,7 | sophomore | 25:5 | 68:16 | 54:17 |
| significant | 18:21,22 | spell | statement | stipulation |
| 54:6 | sort | 4:19 | 56:16 | 16:2 |
| 63:14 | 6:4 13:13 | spelled | statewide | 21:25 |
| silver | 23:14 | 53:20 | 46:16 | 34:6 |
| 69:3 | 62:11 | spent | stating | stories |
| similar | sorts | 10:6,11, | 52:15 | 42:22 |
| 72:18 | 8:22 | 13 11:1 | station | story |
| simply | sound | spring | 58:22 | 50:3,4, |
| 29:12 | 26:17 | 7:23 | 59:6 | 12,13 |
| single | 34:2 | 18:22 | statistic | strategy |
| 10:25 | Sounds | staff | 61:4 | 37:3 |
| 11:4 | 12:20 | 57:1 | statistical | 38:15 |
| sit | Southern | stalled | 20:19 | Street |
| 7:15 | 19:13 | 13:12 | 31:5 39:5 | 48:8 |
| 22:11 | spatio- | stand | 41:15 | Streeter |
| 71:14 | temporal | 23:23 | 54:13 | 56:7,10 |
| 72:4 | 19:12 | standard | statistical | struck |
| site | speak | 13:7 | ly | 58:11 |
| 42:21,24 | 23:16 | 67:10 | 43:18 | structured |
| 43:3,6 | speaker | 68:17 | 54:6 | 59:2 |
| 47:7 | 25:15 | 69:1,17, | statisticia | student |
| site's | speakers | 18 | n | 16:8 |
| 47:9 | 25:10,12, | start | 68:11 | studies |
| Sitting | 19 | 19:18 | statistics | 20:20 |
| 50:18 | speaking | 21:7,17 | 16:20 | 21:4 |
| size | 24:25 | 59:25 | 32:3 | 22:21 |
| 61:15 | 25:16 | started | 33:1,7 | 23:4,20 |
| skipping | specific | 13:14 | 43:23 | 24:6 |
| 56:23 | 39:8 | starts | 63:5 | |
| slope | 45:10 | 67:22 | 70:23,25 | study |
| 68:23 | 71:11 | state | 71:1 | 19:18,20, |
| 69:22 | 72:14 | 4:18 5:22 | statute | 23 20:2, |
| 71:12 | specificall | 7:2 10:2 | 36:3 | 13,15,16 |
| slowed | y | 16:8,13 | statutes | 21:16,17 |
| 25:4,6 | 24:8 43:8 | 18:12,21 | 23:3 | |
| smaller | spectrum | 23:14 | 35:3 36:8 | 24:8,11 |
| 41:9,12 | 48:22 | stay | 58:1,4 | |
| smears | 51:13 | 27:3,6,8 | 15:15 | 65:7 |
| | | 34:15 | step | 67:1,2 |
| | | 44:10,12, | 59:13 | stuff |

SEAN P. TRENDE April 16, 2020
 FAIR FIGHT ACTION vs BRAD RAFFENSPERGER Index: stumble..Three-judge

| | | | | |
|-------------|----------------|----------------|-------------------|--------------------|
| 19:22 | Supreme | talked | 60:5, 9, | tests |
| stumble | 19:10 | 25:20 | 15, 16, 18, | 64:15 |
| 68:12 | 28:12 | talking | 21, 23 | 66:5 67:4 |
| subcategory | syllabus | 21:5 | 61:3, 6, | 72:1 |
| 31:9 | 18:14 | 25:17 | 12, 13 | Texas |
| subject | 19:3 | 45:22 | 62:3, 8 | 72:25 |
| 14:16 | <u>T</u> | 53:12 | 63:5, 16 | 73:13 |
| 41:25 | | 55:19 | 64:3, 7, 8, | |
| 42:4 | | 60:12 | 12, 16, 19, | Theorists |
| 61:17 | T- | 64:16 | 20, 22, 24 | 24:23 |
| submit | DISTRIBUTIO | 69:23 | 65:8, 10, | Theory |
| 73:23 | N | 50:14 | 12 66:6, | 24:18 |
| submitted | T-R-E-N-D-E | tank | 8, 10, 12, | thesis |
| 26:21 | 4:21 | 56:15 | 20 67:1, 8 | 17:8, 12, |
| 38:2 | | taught | 21:22 | 14 |
| subspecialt | t-test | 18:19, 20 | 26:11 | thing |
| y | 60:19 | teach | 27:6, 8, 12 | 5:12 6:1 |
| 32:5 | table | 18:24 | 51:25 | 7:2, 5 |
| substance | 5:13 | teaches | 52:7, 10, | 60:12 |
| 38:19 | tag | 33:20 | 11 53:10 | 70:2 |
| suggest | 43:2 | testify | | 75:10 |
| 54:10 | tail | 5:9 27:17 | things | |
| suggested | 60:11 | 28:6 | 9:10, 11 | |
| 72:7 | 61:14, 15 | 32:21 | 17:22 | |
| suicide | 62:10 | 17:25 | 37:4 | 20:19 |
| 17:21 | tails | 18:5, 7 | 38:10, 18 | 21:11 |
| summarizes | 61:4 | team | 40:18 | 31:7 39:6 |
| 62:3 | ten | 52:16 | 41:21 | 40:18 |
| summary | takes | 55:14 | testifying | 42:9 51:5 |
| 45:24 | 60:4 61:9 | tend | 59:18 | |
| supplied | 5:13 | 27:9 | 32:10 | 65:6 |
| 74:16 | 61:14 | tender | 36:11, 14 | 71:24 |
| support | 72:10 | 40:4, 25 | 39:25 | 72:22 |
| 41:10 | talents | 73:20 | thinks | |
| 65:14, 16 | 30:12 | 54:16 | 74:2, 16, | 60:8 |
| 72:6 | talk | tenure | 25 | thought |
| suppose | 15:3 | 21:9 | testimony | 34:21 |
| 29:25 | 42:12 | term | 10:25 | 70:24 |
| 31:3 | 54:2 | 44:2 | 21:21 | thousand |
| 43:25 | 60:20 | terms | 28:2, 3 | 26:18 |
| | | 43:22 | 32:25 | Three-judge |
| | | 61:13 | 66:5 | 32:22 |
| | | test | 69:13 | |

SEAN P. TRENDE

April 16, 2020

FAIR FIGHT ACTION vs BRAD RAFFENSPERGER Index: three-papers..understanding

| | | | | |
|-----------------|--------------------|-------------------|--------------------|----------------------|
| three- | title | 4:13, 16, | 60:9, 15, | 74:9, 18 |
| papers | 16:9 18:9 | 20, 22 | 16, 18, 21, | 75:2, 14, |
| 19:8 | today | 5:16 | 23 61:12 | 22 76:2, |
| thrust | 5:9, 17 | 6:17, 22, | 62:3 | 14, 20 |
| 54:4 | 12:17 | 24 7:8, | 64:3, 7, | Tyson's |
| ticket | 48:2 | 13, 17 | 19, 20 | 37:3 |
| 52:16 | 49:25 | 12:23 | 65:10, 12 | 75:18 |
| | 56:24 | 15:9 | 66:8 | |
| tie | 71:18 | 39:13 | | |
| 59:17 | | 48:14 | typewritten | U |
| | top | 49:3 | 68:1 | |
| ties | 61:8 | 54:19 | typical | U.S. |
| 53:5 | 67:16 | 55:20 | 8:18 | 33:25 |
| time | 68:2, 5 | 75:7, 17 | typically | U.S.C. |
| 9:14 | topic | 76:2 | 23:18 | 76:11 |
| 10:5, 10, | 19:7 | trial | 36:18, 22 | |
| 13, 23, 24 | toss-up | 27:15, 17 | 64:8 69:2 | ultimate |
| 11:1 | 46:19 | 28:9, 11 | | 59:21 |
| 12:13 | | 32:11, 21 | Tyson | |
| 16:3, 7 | touch | 37:4 | 6:7, 25 | umbrella |
| 19:17 | 51:22 | 38:10, 15 | 7:7 8:3, | 31:7 |
| 40:4, 10, | touched | 39:21 | 8, 14 | unclear |
| 14 47:6 | 71:15 | 74:1 | 12:4, 8, | 50:15 |
| 48:13 | 72:22 | true | 15, 20 | |
| 50:2 | | | 13:11 | undergrad |
| 55:8, 11 | track | 13:4 | 14:23 | 16:4 |
| 58:20 | 21:10 | 49:3, 6, 7, | 22:13 | understand |
| 59:4 | | 9 60:24 | 29:17 | 4:24 5:3 |
| 62:15 | transcript | 68:22 | 30:13 | 23:11 |
| 63:1, 6, 12 | 57:22 | 70:4 | 32:1 | 26:9 |
| 65:20 | transcripts | 76:11 | 34:22 | 29:18, 20 |
| 70:9 | 34:7 | Trump | 36:20 | 36:18 |
| 73:17 | 36:15 | 25:5, 7 | 37:1, 22 | 50:21 |
| 74:8 | translate | turn | 38:14 | 51:5 |
| times | 29:11 | 16:25 | 39:12, 19 | 57:24 |
| 16:13 | 30:8 | 46:25 | 40:2, 9, 22 | 58:4, 7, |
| 48:7 | 31:18 | Turning | 48:10 | 18, 22 |
| 54:6, 11 | translates | 26:10 | 50:8, 10, | 63:18, 22 |
| 61:1 | 31:24 | 73:18 | 25 51:9, | 69:19 |
| 62:5, 7, | travels | turnout | 24 52:3, | |
| 12, 13 | 21:13 | 18:9 | 6, 23 53:7 | understanding |
| 63:21 | trend | two-sided | 54:8 59:7 | |
| 65:15, 17 | 56:19 | 60:5 | 63:3, 23 | 49:8, 10 |
| timewise | | two-tailed | 69:6 | 58:3 59:1 |
| 26:17 | Trende | | 71:22 | 65:9 |
| | | | 72:12 | |

SEAN P. TRENDE April 16, 2020
 FAIR FIGHT ACTION vs BRAD RAFFENSPERGER Index: understood..yesterday

| | | | | |
|--------------------|-----------------|-------------------|------------------|------------------|
| understood | 15:18 | 12,13 | Winter | works |
| 5:5 59:15 | 26:12,13 | 63:1,6, | 7:23 | 6:2 9:9 |
| University | 32:14,15 | 12,21 | Wisconsin | 40:22 |
| 16:8,13 | 33:24 | 65:14,17, | 33:20,22 | workup |
| 18:24 | 34:12 | 20 | | 45:4 |
| | 35:23 | | word | |
| Unnecessary | 36:6,10, | Waiting | 22:18 | worry |
| ly | 17 62:17 | 50:18 | 23:9 | 40:16 |
| 26:5 | 63:7 | waived | 25:25 | worth |
| unpublished | 65:11 | 73:13 | 32:3 | 45:11 |
| 45:19,23 | Virginia | walk | 42:10 | write |
| unrelated | 73:3,7,13 | 71:23 | 66:15 | 20:17 |
| 30:11 | visiting | Wall | worded | 38:16 |
| unusual | 56:8 | 48:8 | 19:21 | 57:11 |
| 70:12 | voices | wanted | 71:10 | write-ups |
| unwarranted | 48:6 | 31:17 | work | 46:3 |
| 22:19 | | 52:6 | 7:2 9:1, | writing |
| updated | 4:13 12:8 | weapons | 10,22 | |
| 17:3,18 | 54:22,25 | 50:17 | 10:2 | 47:1 |
| upper | vote | Web | 11:3,16, | written |
| 61:12 | 29:13 | 42:21,24 | 20,24 | 10:15 |
| upside | voters | 47:7 | 13:1,8 | 20:5,6 |
| 9:3 | 58:21 | Website | 16:25 | 28:3 |
| utilize | 59:6 | 48:20 | 17:6 | |
| 65:8 | 63:2,13, | 52:13 | 20:10,19 | wrote |
| utterly | 21,22 | weeds | 26:13 | 45:17 |
| 31:2 | 65:21 | 30:5 | 29:6,10 | |
| | voting | week | 30:8,15, | Y |
| | 15:10 | 10:10 | 20,21 | |
| v | 18:8,9 | weird | 31:1,2,3, | year |
| | 19:10 | 58:11 | 17 32:7 | 7:20,22 |
| validate | 33:21 | | 33:10 | 10:21 |
| 67:1 | 34:15,16 | Wesleyan | 34:11 | |
| variety | 35:20 | 18:24 | 44:8 54:3 | 17:2,3,4, |
| 24:15 | 36:3 | whatsoever | 57:10 | 18,21 |
| | | 46:5,8 | 62:22 | 18:22 |
| version | W | white | 73:24 | 50:15 |
| 12:12 | | 62:6 | 74:2,7,12 | years |
| 37:13 | wait | 65:17,21 | 75:1 | 15:25 |
| versions | 54:6,11 | whites | workday | 25:2 34:4 |
| 37:12 | 58:20 | 62:15,16 | 10:14 | 35:15,16 |
| versus | 59:4 61:1 | | working | 56:22 |
| | 62:4,6, | | 11:2 | yesterday |
| | | | 73:19,21 | 6:25 7:5 |

SEAN P. TRENDE
FAIR FIGHT ACTION vs BRAD RAFFENSPERGER

April 16, 2020
Index: York..you-all

York

48 : 7

you-all

13 : 12